

AN INTERSECTIONAL APPROACH TO THE CONVENTION ON THE ELIMINATION OF  
ALL FORMS OF DISCRIMINATION AGAINST WOMEN AS A FRAMEWORK TO  
ADVANCE INDIGENOUS WOMEN'S RIGHTS IN MEXICO

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## **ABSTRACT**

Indigenous women are among the most marginalized groups in Mexican society. The intersection of gender with other factors gives rise to the unique forms of discrimination that indigenous women experience. These factors include race, ethnicity, culture, language, religion, socioeconomic status, and education level. The specific experiences of indigenous women call for an intersectional approach to policy making and international human rights law interpretation and application to ensure that indigenous women fully exercise their rights. This thesis analyzes the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) with an intersectional perspective to answer three research questions: (1) In what ways can CEDAW be used to hold Mexico accountable for human rights violations against indigenous women in domestic courts? (2) In what ways can CEDAW be used to advance indigenous women's rights at the international level? (3) In what ways can CEDAW be used to inform and transform indigenous peoples' communitarian laws that discriminate against women? The thesis provides an argumentative policy analysis and recommendations to apply CEDAW with an intersectional perspective—in light of the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention of 1989, and CEDAW Committee's general recommendations and concluding observations—to protect indigenous women's rights at the national, international, and local levels.

## **BIOGRAPHICAL SKETCH**

Paulina Lucio Maymón is a Fulbright Fellow from Mexico pursuing a Master of Public Administration at the Cornell Institute for Public Affairs (CIPA). She graduated summa cum laude with a bachelor's degree in International Relations from Universidad Iberoamericana in Mexico City, where she also obtained a graduate certificate in Human Rights. Her research interests focus on human rights, gender equality, and international law. At Cornell University, Paulina worked as Senior Managing Editor of the Cornell Policy Review, the official public policy journal of CIPA. Paulina participated in the post-conviction litigation of death penalty cases in the United States and Tanzania with the International Human Rights Clinic of Cornell Law School. She also contributed to the drafting of a handbook to prevent gender-based violence in Zambia with the Global Gender Justice Clinic of Cornell Law School.

During the summer of 2017, Paulina worked as a Research Assistant at the Evaluation Office of UN Women in NYC, where she compiled and analyzed data for the evaluation of UN Women's contribution to governance and national planning. Prior to attending Cornell, Paulina worked as a Gender Equality and Human Rights Consultant at the Institute of the National Housing Fund for Workers (INFONAVIT), a federal institution that grants mortgage credits to workers in Mexico. After graduating from CIPA, Paulina will be working as a Research Associate at the Cornell Center on the Death Penalty Worldwide.

To my husband for his support, patience, and wisdom.

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## **LIST OF ABBREVIATIONS**

AFI	Federal Investigation Agency
AMMOR	Mexican Association of Women Organized in Network
ANIPA	National Plural Indigenous Assembly for Autonomy
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol of the Convention against Torture
CCD	Common Core Document
CED	Convention for the Protection of All Persons from Enforced Disappearance
CDI	National Commission for the Development of Indigenous Peoples
CDMCH	Center for Women's Rights of Chiapas
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD Committee	Committee on the Elimination of Racial Discrimination
CIESAS	Center for Research and Advanced Studies in Social Anthropology
CIPA	Cornell Institute for Public Affairs
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CODIMUJ	Diocesan Coordination of Women
COLEM	Women's Group of San Cristobal de las Casas
COMEXUS	U.S. Mexico Commission for Educational and Cultural Exchange
CONAMI	National Coordinating Committee of Indigenous Women in Mexico
CONAPO	National Population Council

CONEVAL	National Council for Evaluation of Social Development Policy
CRC	Convention on the Rights of the Child
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
CRPD	Convention on the Rights of Persons with Disabilities
ECMIA	Women's Continental Union of the Americas
EZLN	Zapatista Army of National Liberation
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO CONVENTION 169	Indigenous and Tribal Peoples Convention of 1989
INEGI	National Institute of Statistics and Geography
INFONAVIT	National Housing Fund for Workers
NGOs	Non-governmental organizations
OECD	Organization for Economic Cooperation and Development
OHCHR	United Nations High Commissioner for Human Rights
PGR	Attorney General's Office
PRD	Party of the Democratic Revolution
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

## PREFACE

*“Cuando una mujer avanza no  
hay hombre que retroceda.”<sup>1</sup>*

Zapatista Women’s Motto

When I started this research, as a non-indigenous woman from Mexico City I felt I had no legitimacy to write about indigenous women in Mexico. Despite having met indigenous women in the past in Oaxaca, Chiapas, and Mexico City, I had never had a conversation with them beyond exchanging a few words in order to buy their beautiful handicrafts. After meeting and interviewing indigenous women for this research, I realized that none of them were troubled by the fact that I was a non-indigenous woman interviewing them to write a paper in a foreign language to obtain a graduate degree from a foreign university. Initially, I was ashamed for the lack of experience and understanding I had about their livelihoods, needs, wants, fears, and dreams. Nevertheless, the candidness, warmth, and gratitude they showed towards me during our interviews made me realize that you do not have to be an indigenous woman to legitimately care about indigenous women’s rights. Similarly, you do not have to be Syrian to care about the war in Syria, Palestinian to care about the human rights violations perpetrated in Gaza and the West Bank, or Rohingya to care about the persecution of Rohingyas in Myanmar. In Audre Lorde’s words, “I am not free while any woman is unfree, even if her shackles are different than mine.”

Norma Don Juan, Isabel Gómez, and Laura Hernández, representatives of the National Coordinating Committee of Indigenous Women in Mexico (CONAMI), made me realize that it is our shared humanity that confers us legitimacy to care about each other regardless of how similar or dissimilar our life experiences are. Of course, each one of us has different struggles as a result of our upbringing, ethnicity, race, socioeconomic status, education level, and age. After talking to them, however, I understood that we also have many commonalities. Although they are indigenous

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<sup>1</sup> When a woman steps forward, no man steps back.

women and I am not, we are all discriminated against for our gender; we all fight for our rights; we all worry about our loved ones' safety; we all strive for justice and peace in our country; and we all like coffee and chilaquiles. I realized that it is not legitimacy that we need to care and fight for other people's causes. All that is needed to advance someone else's cause is determination. We have to be determined to listen, take different perspectives, empathize, and raise our voices against injustice.

I wrote this thesis because I want to help bridge the gap between privileged and unprivileged groups in Mexico. I want to make evident that behind Mexico's economic successes are millions of Mexicans living in poverty with no access to basic services. I want to show that despite Mexico's democratic breakthroughs the peoples who first inhabited the country's territory are still disenfranchised and excluded. I want to show that behind Mexico's commitment to gender equality there are millions of girls who are not sent to school, thousands of women who are assassinated, hundreds of women who are prevented from running for office, and other thousands who cannot own the lands on which they work. Why? Because they are women.

As a Mexican woman, who has had the opportunity to access higher education, I believe it is my duty to try to find ways of bridging the gap between poor and rich, indigenous and non-indigenous peoples, and human rights law and its materialization in people's lives. This thesis is an attempt to start bridging those gaps.

## INTRODUCTION

Indigenous women suffer severe social disadvantages and are among the most marginalized groups in Mexican society. Despite indigenous women's organized efforts to advance their rights in the country, they still suffer from political and social exclusion, violations to their sexual and reproductive rights, inadequate living standards, ethnic and gender-based violence, loss of land and displacement, child marriage, human trafficking, and lack of access to justice. The intersection of gender with other factors gives rise to the particular forms of discrimination and human rights violations that indigenous women experience. These factors include race, ethnicity, culture, language, religion, and socioeconomic status. Indigenous women also encounter unique discrimination because of their age, marital status, occupation, sexual orientation, education level, and health.

The specific experiences of indigenous women call for an intersectional approach to policy making and international human rights law interpretation and application to ensure that indigenous women fully exercise their rights. This thesis aims to provide an argumentative policy analysis and recommendations to protect, advance, and promote indigenous women's rights in Mexico. I will use an intersectional approach to analyze the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the only universal international treaty that specifically addresses women's rights, to answer the following research questions:

- (1) In what ways can CEDAW be used to hold Mexico accountable for human rights violations against indigenous women in national courts?
- (2) In what ways can CEDAW be used to advance and promote indigenous women's rights at the international level?

(3) In what ways can CEDAW be used to inform and transform indigenous peoples' communitarian laws and practices that discriminate against women?

This research draws from several sources such as demographics and statistics from the National Population Council (CONAPO), the National Commission for the Development of Indigenous Groups (CDI), and the National Institute of Statistics and Geography (INEGI); historical books about indigenous women as political actors in Mexico; international human rights treaties and declarations; books and academic articles about the theory of intersectionality and international law; books and academic articles about the implementation of CEDAW in other regions; CEDAW Committee's general recommendations and concluding observations; and the Constitution of Mexico as well as federal and state legislation. In addition, I traveled to Mexico City in January 2018 and to Chiapas, Mexico in February 2018 to conduct interviews with three indigenous women, two human rights lawyers, and two women's rights advocates. The findings of these interviews are included throughout this thesis.

The thesis is divided into five chapters. Chapter I presents statistics on indigenous women in Mexico, a historical review of their political agency, and an overview of the human rights violations affecting them. Chapter II explains the theory of intersectionality and its importance in the application of international human rights law. It also outlines the most relevant human rights provisions for indigenous women enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Indigenous and Tribal Peoples Convention of 1989 (also known as ILO Convention 169). Chapter III presents an intersectional analysis of CEDAW and examines the CEDAW Committee's general recommendations and concluding observations relevant to indigenous women. Chapter IV presents the different ways in which indigenous women can use CEDAW to advance and protect their rights at the national, international, and local levels.

Chapter V provides specific recommendations for the Mexican government, civil society, and the CEDAW Committee to effectively advance and protect indigenous women's rights, drawing from CEDAW, ILO Convention 169, CEDAW Committee's recommendations and observations, and the theory of intersectionality.

The main argument is that if interpreted and applied with an intersectional perspective—in light of the UNDRIP, the Indigenous and Tribal Peoples Convention of 1989, and CEDAW Committee's recommendations and observations—CEDAW can be an effective legal framework to protect indigenous women's human rights in Mexico at the national, international, and local levels. At the national level, indigenous women and their advocates can use CEDAW to hold the Mexican State accountable for human rights violations before any court in the country, since the Human Rights Reform of 2011 placed human rights treaties ratified by Mexico at the same hierarchical level as the Constitution. At the international level, indigenous women and their advocates can engage with the CEDAW Committee's monitoring mechanisms by submitting individual communications, inquiry petitions, and/or shadow reports to inform the Committee's assessment of Mexico's implementation of CEDAW. At the local level, indigenous women and their advocates can import international human rights provisions and translate them in terms that indigenous communities will accept them to challenge discriminatory practices and laws. CEDAW can provide a platform for information, discussion, and analysis for indigenous women to review and assess gender and power relations in their communities.

## CHAPTER I.

### INDIGENOUS WOMEN IN MEXICO

#### A. Definition and Demographics

There is no universally accepted definition of “indigenous peoples.” In fact, every country and organization has its own definition of indigenous peoples, usually based on some of the following criteria: “self-identification, historical continuity with pre-colonial societies, strong link to territories and resources, distinct social, economic and political systems, distinct language, culture and beliefs, and a resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”<sup>2</sup> According to article 2 of the Constitution of Mexico, indigenous peoples are:

[...] those who have descended from the people who inhabited the present territory of the country at the beginning of the colonization and who have preserved at least in part their own social, economic, cultural, and political institutions. The awareness of their indigenous identity shall be an essential criterion in determining to whom the provisions on indigenous peoples apply. Communities of indigenous peoples are those which constitute a social, economic, and cultural unit, are situated in a territory, and have their own authorities in accordance with their traditions and customs.<sup>3</sup>

In Mexico, three federal institutions measure and monitor the country’s indigenous population: the National Population Council (CONAPO), the National Commission for the Development of Indigenous Groups (CDI), and the National Institute of Statistics and Geography (INEGI). Each of these institutions utilizes different criteria to estimate Mexico’s indigenous

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<sup>2</sup> United Nations Permanent Forum on Indigenous Issues, “Who Are Indigenous Peoples?,” n.d., [http://www.un.org/esa/socdev/unpfi/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfi/documents/5session_factsheet1.pdf); Paulina Lucio Maymon, “Systems Thinking for Policymaking: The Case of Indigenous Women’s Rights in Mexico,” *The Cornell Policy Review*, August 9, 2017, <http://www.cornellpolicyreview.com/indigenouswomensrightsinnmexico/>.

<sup>3</sup> Constitution of the United Mexican States [Constitution of Mexico], *as amended*, Diario Oficial de la Federación [D.O.], art.2, 14 de agosto de 2001.



population.<sup>4</sup> Table 1 shows the criteria considered by each institution to estimate the indigenous population based on the 2010 Population and Housing Census:

**Table 1. Estimates of Mexico’s Indigenous Population for 2010<sup>5</sup>**

Criterion	CDI	CONAPO	INEGI
Speakers of an indigenous language	Yes	Yes	Yes
Self-identification	No	Yes	Yes
Belonging to a family with at least one member who speaks an indigenous language	Yes	Yes	Yes
Belonging to a family with at least one member who self-identifies as indigenous	No	Yes	No
Living in the same home with at least one person—related or not—who self-identifies as indigenous or speaks an indigenous language	No	Yes	No
<b>Total indigenous population estimated in 2010:</b>	<b>11,131,562</b>	<b>14,134,119</b>	<b>16,102,646</b>

According to a Population Survey conducted in 2015 by INEGI, 21.5 percent of the total population in Mexico—equivalent to 25.6 million people, 13.2 million of whom are women—defines itself as indigenous. Six percent of the population—equivalent to 7.4 million people, 3.8 million of whom are women—speaks an indigenous language.<sup>6</sup> In the same year, CDI estimated that there are 12.2 million indigenous people, 6.1 million of whom are women.<sup>7</sup> These figures

<sup>4</sup> Lucio Maymon, “Systems Thinking for Policymaking.”

<sup>5</sup> Juan Cristóbal Rubio Badán, “Censos y Población Indígena en México: Algunas Reflexiones,” Series de La Cepal (Sede Subregional de la CEPAL en México, July 2014), [http://repositorio.cepal.org/bitstream/handle/11362/36858/1/S1420252\\_es.pdf](http://repositorio.cepal.org/bitstream/handle/11362/36858/1/S1420252_es.pdf).

<sup>6</sup> Instituto Nacional de Estadística y Geografía (INEGI), “Encuesta Intercensal 2015,” 2015, [http://www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/especiales/ei2015/doc/eic\\_2015\\_presentacion.pdf](http://www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/especiales/ei2015/doc/eic_2015_presentacion.pdf).

<sup>7</sup> Comisión Nacional para el Desarrollo de los Pueblos Indígenas [CDI], “Indicadores Sobre Las Mujeres Indígenas. Resultados de La Encuesta Intercensal 2015,” March 2017, <http://www.gob.mx/cdi/articulos/indicadores-sobre-las-mujeres-indigenas-resultados-de-la-encuesta-intercensal-2015?idiom=es>.

show that the number of indigenous people in the country depends on the definition of indigenusness that the government and other institutions decide to adopt.<sup>8</sup>

The lack of a homologized method for defining and measuring Mexico's indigenous population raises several policy and jurisdictional issues that must be further explored. For instance, how can the government, or any other organization, protect the rights of indigenous peoples without a clear idea of who they are? How can the rights under article 2 of the Mexican Constitution—rights to self-determination, autonomy, and self-governance—be exercised effectively if there is not a clear definition of indigenous peoples? These questions fall outside the scope of this thesis, although they show how indigenous peoples have been sidelined from the public agenda. Acknowledging the discrepancies in the demographic statistics, it could be inferred that there are between 6.1 and 13.2 million indigenous women in Mexico, who represent around 4.9 and 10.7 percent of the total population.<sup>9</sup>

## **B. Indigenous Women as Political Actors in Mexico**

The last three decades have given rise to organized movements of indigenous women in Mexico. Since the 1990s, indigenous women have become political actors who seek the protection of both the collective rights of their people and their human rights as women. They promote a unique human rights agenda drawn from their ethnic and gender identity within a culturally situated environment. They fight for just relationships between men and women derived from notions of a dignified life and complementarity between the sexes and between human beings and nature.<sup>10</sup>

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<sup>8</sup> Lucio Maymon, "Systems Thinking for Policymaking."

<sup>9</sup> Lucio Maymon.

<sup>10</sup> Laura Valladares de la Cruz, "Los derechos humanos de las mujeres indígenas. De la aldea local a los foros internacionales," *Alteridades* 18, no. 35 (June 2008): 47.

Rosalva Aida Hernández Castillo, Professor at the Center for Research and Advanced Studies in Social Anthropology (CIESAS) in Mexico City, argues that to understand the political participation of indigenous women and the emergence of gender issues in the political agenda of indigenous organizations, it is essential to recognize the history of struggle and resistance in which they have been participating since the colonial period. The peasant movement, the uprising of the Zapatista Army of National Liberation (EZLN), liberation theology, rural feminism, and international discourses and agencies have contributed to the construction of indigenous women's political identities. These dialogues, as Hernández Castillo labels them, will be explained in the following paragraphs.<sup>11</sup>

Hernández Castillo describes her experience at the Second National Encounter of Indigenous Women in 2000, a meeting of 350 women who gathered in the municipal auditorium of Chilpancingo, Guerrero to discuss their problems as women and members of indigenous communities. She interviewed one of the leaders of the event, a Mixtec woman, who explained that her political knowledge came from her involvement in left-wing militancy. In the 1960s, she participated in the Communist Party and the guerrilla movement of Lucio Cabañas.<sup>12</sup> For many indigenous women of Guerrero, the Communist Party was a source of knowledge and experience that continues to guide their political agenda. These women believe that criticism of state and capitalism must be central to any indigenous women movement. The final declaration of this

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<sup>11</sup> Rosalva Aida Hernández Castillo, *Multiple Injustices: Indigenous Women, Law, and Political Struggle in Latin America* (Tucson [Arizona]: The University of Arizona Press, 2016), 69.

<sup>12</sup> Lucio Cabañas was a rural teacher, who became the leader of a peasant rebellion in the state of Guerrero in the 1960s and 1970s. As the son of peasants, Cabañas said he had witnessed poverty, oppression, exclusion and that the government's brutal oppression spurred him to take up arms. He was the founder of the Party of the Poor, a left-wing political movement and militant group in Guerrero from 1967 to 1974. Cabañas died in a military ambush in 1974. His name continues to be prominently displayed on flyers, posters, t-shirts, and other popular media throughout Guerrero, including the walls of his alma mater, *Escuela Normal* (teacher training college) of Ayotzinapa. See O'Neill Blacker-Hanson, *The Intellectual Roots of Guerrero's Cold War Rebellion*, 18, no.2 *Journal of Iberian and Latin American Research*, 101–17 (December 04, 2012), doi:10.1080/13260219.2012.740823.

encounter was titled the “Benita Galeana Declaration” after one of the most important communist leaders in Mexico, a Guerrero native and an active participant in the peasant, railroad, and teacher movements.<sup>13</sup>

The armed uprising of the Zapatista Army of National Liberation (EZLN)<sup>14</sup> on January 1, 1994 in Chiapas made visible the presence of indigenous women as independent political actors in the Mexican national context. This political-military movement provided tools for indigenous women to question not only State violence, but also the exclusion and gender violence experienced in their own communities. Since the first public appearance of the EZLN, the large number of women within its ranks has drawn worldwide attention. Several of them were leaders of the movement, such as Commander Ramona, Commander Trinidad, Commander Susana, and Commander Esther, who became symbols of indigenous women’s resistance.<sup>15</sup>

Zapatismo was the first indigenous movement in Mexico that officially included gender demands through the Revolutionary Women’s Law. This law contains ten points including indigenous women’s rights to political participation and to leadership positions, to work and receive a fair wage, to choose how many children to have and to take care of, to healthcare and

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<sup>13</sup> Hernández Castillo, *Multiple Injustices*, 71–74.

<sup>14</sup> On January 1, 1994, thousands of indigenous men and women in the southern state of Chiapas, Mexico, who identified themselves as the Zapatista Army of National Liberation (EZLN), declared war on the Mexican government. The Zapatistas considered themselves the product of 500 years of struggle against Spanish colonization, North American imperialism, and Mexican authoritarianism. Their motto was: “Today, we say enough.” It was no accident that the uprising took place the same day the North American Free Trade Agreement (NAFTA) came into force. The Zapatistas were rebelling against the free market model enshrined in NAFTA and the national policies that promoted economic liberalization for Mexico, including the privatization of community-owned lands. Indigenous communities live in the most marginalized and remote lands of Mexico. As shown above, they are known for their high levels of poverty and lack of access to public services including healthcare and education. The Zapatista struggle was a direct result of these conditions, bringing worldwide attention to the problems of Mexico’s indigenous population. Their uprising was part of a historic struggle for land rights, human rights, political autonomy, cultural recognition, and the rights to self-determination, autonomy, and self-governance. See Jesús Antonio Machuca, “La Democracia Radical: Originalidad y Actualidad Política Del Zapatismo de Fin Del Siglo XX,” in *El Zapatismo y La Política* (Plaza y Valdés Editores, 1998); Paulina Lucio Maymon, “Systems Thinking for Policymaking.”

<sup>15</sup> Hernández Castillo, *Multiple Injustices*, 74–80.

food, to education, to choose who to marry, to a life free of sexual and domestic violence, and to take part in revolutionary forces.<sup>16</sup> Even though not all indigenous women are familiar with this law, its existence has become a symbol of justice for women. It was within this cultural climate that many indigenous organizations started to integrate the idea of equality between women and men as part of their political agendas.<sup>17</sup>

The Catholic Church has also played an important role in the construction of indigenous women's political and cultural agency. Hernández Castillo explains that in different regions of Mexico, indigenous women have created their own proposal on how to read the bible with the "mind and heart of a woman."<sup>18</sup> The spaces for reflection and organizational processes promoted by liberation theology<sup>19</sup> and Indian theology<sup>20</sup> have been fundamental for the appearance of social and political movements in Latin America and for the advancement of indigenous rights discourses. Through these movements, indigenous and mestizo<sup>21</sup> women have questioned the structures of inequality that exclude them. For instance, indigenous women from the Dioceses of San Cristóbal de las Casas, Chiapas—including Tsotsil, Tseltal, Chol, and Tojolabal women—

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<sup>16</sup> Ejército Zapatista de Liberación Nacional (EZLN), "Ley Revolucionaria Sobre Las Mujeres" (1994), [http://www.debatefeminista.pueg.unam.mx/wp-content/uploads/2016/03/articulos/009\\_03.pdf](http://www.debatefeminista.pueg.unam.mx/wp-content/uploads/2016/03/articulos/009_03.pdf).

<sup>17</sup> Hernández Castillo, *Multiple Injustices*, 80–82.

<sup>18</sup> Hernández Castillo, 95.

<sup>19</sup> After the Second Vatican Council (1962-1965), disenchanted members of the clergy and the oppressed classes of Latin America united together to reinterpret the role of the Catholic Church in society and to reclaim religion towards the pursuit of social justice. Liberation theology encouraged a break from an elitist notion of the Church and the return of control to the people. By involving the poor in their own liberation and offering Christianity as a tool towards a just society, liberation theologians changed the relationship between not only the Church and the state, but also the Church and the people. Guided by the Peruvian priest, Gustavo Gutiérrez, this movement empowered marginalized people throughout Latin America, while still utilizing a formal theological approach. Latin American priests who followed this theology and were in contact with the most disadvantaged groups in society tried to build bridges between Catholicism and Marxism and opted to participate in political-military organizations. Liberation theology rejected the paternalist Catholic tradition. See Olivia Singer, *Liberation Theology in Latin America*, accessed May 8, 2018, <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-15-culture-and-society/essays-on-culture-and-society/liberation-theology-in-latin-america/>

<sup>20</sup> Indian theology emphasizes the complementary roles between genders that exists within indigenous cultures. Hernández Castillo, 86.

<sup>21</sup> Mestizo is a racial category used in Latin America to describe those with both Native American and European Spanish ancestry.

created reflection groups about inequalities in their communities. In 1992, a group of both indigenous and mestizo women created the Diocesan Coordination of Women (CODIMUJ), which is to date the largest women's organization in Chiapas and one of the largest in the country with seven hundred local groups and more than ten thousand members.<sup>22</sup> In February 2017, they celebrated their 25<sup>th</sup> anniversary with the motto: "We resist mistreatment and marginalization of women's rights promoted by the capitalist and patriarchal system."<sup>23</sup> Josefina Martínez and Cecilia Roveló, members of CODIMUJ, explained during an interview in San Cristobal de las Casas, Chiapas, in February 2018 that they reinterpret passages from the bible and study strong female characters to empower women to stand up against discrimination and mistreatment.<sup>24</sup>

Another factor that influenced indigenous women's political identity and agenda was rural feminism. The Mexican peasant movement developed its struggle in permanent tension with post-revolutionary government policies. In the 1960s, the limitations of the agrarian reform became evident for the dispossessed peasants, forcing them to sell their labor at low cost in the agroindustry. This situation led women to create their own organizations within the peasant movement giving birth to what became known as rural feminism. Rural feminists created the Mexican Association of Women Organized in Network (AMMOR) and secured spaces for women at the National Plural Indigenous Assembly for Autonomy (ANIPA). These and other organizations converged in 1997 in Oaxaca to form the National Coordinating Committee of Indigenous Women in Mexico (CONAMI), the first national organization that puts indigenous

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<sup>22</sup> Hernández Castillo, *Multiple Injustices*, 93; PromediosMexico, *Historia Del Área de Mujeres de La Coordinadora Diocesana de Mujeres*, accessed March 26, 2017, <https://www.youtube.com/watch?v=lu7V656gBhI>.

<sup>23</sup> Diocesan Coordination of Women [CODIMUJ]. Facebook Page, <https://www.facebook.com/codimuj/photos/>

<sup>24</sup> Interview with Josefina Martínez and Cecilia Roveló, members of CODIMUJ, interview by Paulina Lucio Maymon, in person in San Cristóbal de las Casas, Chiapas, February 19, 2018.

women's rights at the center of its agenda.<sup>25</sup> I interviewed three members of CONAMI as part of the research for this thesis.

Finally, the influence of international discourses, instruments, and agencies working on the defense and promotion of women's rights has also been a key factor that facilitated indigenous women's organizing. Indigenous women from Mexico attended the First Continental Meeting of Indigenous Women of the Americas hosted in Ecuador in 1995—just before the Women's International Conference of Beijing—and have been involved in transnational organizations, such as the Women's Continental Union of the Americas (ECMIA). Through these emergent international networks, indigenous women have acquired resources and ideas to advance their demands for equality.<sup>26</sup> Sometimes international organizations have tended to impose a gender and development agenda that does not always correspond to indigenous women's needs and world views. In response, indigenous women have challenged the dichotomy between collective rights and individual rights by building a culturally situated gender agenda at the intersection of indigenous peoples' collective rights, women's rights, and human rights.<sup>27</sup>

This brief historical review shows the diversity of experiences that have shaped indigenous women's political and cultural identities, including the peasant movement, the Zapatista uprising, liberation theology, rural feminism, and national and international women's rights organizations. Indigenous women in Mexico have mobilized to demand recognition of their collective rights as distinct peoples, challenging colonial, national, and universalist discourses. At the same time, they are working to transform the communitarian institutions and practices that discriminate against

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<sup>25</sup> Hernández Castillo, *Multiple Injustices*, 103–5.

<sup>26</sup> Stéphanie Rousseau and Anahi Morales Hudon, *Indigenous Women's Movements in Latin America: Gender and Ethnicity in Peru, Mexico, and Bolivia* (Springer, 2017), 130.

<sup>27</sup> Hernández Castillo, *Multiple Injustices*, 114.

them as women.<sup>28</sup> In the words of Zapatista Commander Ramona: “We, indigenous women, have raised our voices to say: Never again a Mexico without us. Never again a rebellion without us.”<sup>29</sup>

### **C. Human Rights Violations Affecting Indigenous Women in Mexico**

Despite indigenous women’s organized efforts to advance their rights, they still suffer from political and social exclusion, violations to their sexual and reproductive rights, gender-based violence, inadequate living standards, gender and ethnic based violence, loss of land and displacement, forced migration, child marriage, human trafficking, and lack of access to justice. This section presents some forms of discrimination that indigenous women face in Mexico both inside and outside their communities.

#### **i. Public and Political Life**

Indigenous peoples in Mexico have historically fought to preserve their own traditional forms of organization and governance. Since the Zapatista uprising of 1994, the Mexican government has made political concessions, starting with the San Andrés Accords of 1996, which granted indigenous peoples a political voice in local governments.<sup>30</sup> The greatest concession came on August 14, 2001 when the Mexican government amended article 2 of the Constitution of Mexico, recognizing indigenous peoples’ rights to self-determination, autonomy, and self-governance. Today, indigenous communities elect federal and state authorities according to the standard electoral processes of secret ballot and universal suffrage, and elect municipal authorities via indigenous customs and customary laws, which include holding community assemblies,

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<sup>28</sup> Hernández Castillo, 119–22.

<sup>29</sup> Valladares de la Cruz, “Los derechos humanos de las mujeres indígenas. De la aldea local a los foros internacionales,” 48.

<sup>30</sup> Jesús Antonio Machuca, “La Democracia Radical: Originalidad Y Actualidad Política Del Zapatismo de Fin Del Siglo XX,” in *El Zapatismo Y La Política* (Plaza y Valdés Editores, 1998).



appointing a council of elders to make decisions, raising hands to support a candidate, or drawing hash marks beneath a candidate's name.<sup>31</sup>

Article 7 of CEDAW establishes the rights of women to vote in all elections and to be eligible for election to all publicly elected bodies, to participate in the formulation of government policy and its implementation, to hold public office and perform all public functions at all levels of government, and to participate in non-governmental (NGOs) organizations or associations concerned with the public and political life of the country.<sup>32</sup> In many indigenous communities of Mexico, however, women have been excluded from political life and decision-making processes. For instance, in nearly a quarter of municipalities in Oaxaca with communitarian legal systems, women were not permitted to participate in local assemblies, nor were they allowed to be elected as municipal authorities. By 2008, only three women had been elected as municipal presidents in these municipalities.<sup>33</sup> In Chiapas, in the municipalities of Chanal, Tila, Oxchuc, and Chenalhó, indigenous women have been forced to step down after winning the municipal election. In other municipalities in Chiapas—including San Juan Chamula Malpaso, Reforma, Tecpatán, Amatenango del Valle, San Cristóbal de las Casas, and Las Rosas—indigenous women appear as municipal presidents on paper but are prevented from governing in practice.<sup>34</sup>

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<sup>31</sup> Michael Stephen Danielson, Todd Alan Eisenstadt, and Jennifer Yelle, "Ethnic Identity, Informal Institutions, and the Failure to Elect Women in Indigenous Southern Mexico," *Journal of Politics in Latin America* 5, no. 3 (December 10, 2013): 6.

<sup>32</sup> Convention on the Elimination of All Forms of Discrimination against Women art. 1, December 18, 1979, G.A. Res. 34/180, [hereinafter CEDAW].

<sup>33</sup> Rachel Sieder, "Legal Pluralism and Indigenous Women's Rights in Mexico: The Ambiguities of Recognition Symposium: Twenty First Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium: Constitution and Custom: Women's Rights and Access to Justice in Pluralist Society," *New York University Journal of International Law and Politics* 48 (2016 2015): 1139.

<sup>34</sup> Sandra de los Santos, "Las mujeres que no las han dejado gobernar en Chiapas," *Revista Enheduanna* (blog), July 28, 2016, <http://www.revistaeneduanna.com.mx/especiales/las-mujeres-que-no-las-han-dejado-gobernar-en-chiapas/>.

The case of Eufrosina Cruz drew national and international attention to the political exclusion and discrimination of indigenous women. Eufrosina, a Zapotec teacher from Santa María Quiegolani, Oaxaca, was elected municipal president in 2007 but subsequently denied access to political office. The local municipal council, consisting of only men, ordered the votes that had been cast for Eufrosina to be disregarded under the argument that women were not allowed to hold public office pursuant to communitarian laws.<sup>35</sup> After being prevented from taking office at the municipal level, Eufrosina decided to run for office as a representative of Oaxaca's State Congress. She was elected chairwoman of the State Congress, and later became president of the State Congress. In 2012, she was elected representative of Oaxaca in the National Congress.<sup>36</sup>

After the case of Eufrosina Cruz, a new reform was passed to Oaxaca's electoral code in 2010, which mandated community assemblies to meet gender quota requirements in place for political parties.<sup>37</sup> In 2012, Mexico amended article 41 of the Mexican Constitution requiring that political parties develop rules to ensure gender parity in the nomination of candidates in federal and local elections.<sup>38</sup> In 2015, Mexico amended article 2(A)(III)<sup>39</sup> of the Mexican Constitution explicitly recognizing the political rights of indigenous women:

“to vote and be elected for under equitable conditions as men; as well as to guarantee access to public office or elected positions to those citizens that have been elected or designated within a framework that respects the federal pact and the sovereignty of the states. In no case shall the communitarian practices limit the electoral or political

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<sup>35</sup> Relea Francesc, “La rebelión se llama Eufrosina Cruz,” *El PAIS*, February 10, 2008, [http://elpais.com/diario/2008/02/10/internacional/1202598001\\_850215.html](http://elpais.com/diario/2008/02/10/internacional/1202598001_850215.html).

<sup>36</sup> Francesc, Sieder, “Legal Pluralism and Indigenous Women's Rights in Mexico,” 1140.

<sup>37</sup> Sieder, “Legal Pluralism and Indigenous Women's Rights in Mexico,” 1140.

<sup>38</sup> Sieder, “Legal Pluralism and Indigenous Women's Rights in Mexico,” 1142.

<sup>39</sup> Before 2015, article 2 of the Mexican Constitution specified that indigenous communities had to apply their traditional standards, procedures, and practices “respecting individual guarantees, human rights, and, in a relevant manner, the dignity and completeness of women [...]” as well as “[...] guaranteeing the participation of women in conditions of equality to those of men.” The vague language used in article 2 of the Mexican Constitution yielded the way to different interpretations on how to guarantee the participation of women in conditions of equality. For example, most indigenous communities in Mexico granted women the right to vote, but not the right to be elected as authorities of their communities.

rights of the citizens in the election of their municipal authorities.”<sup>40</sup>

Laura Hernández, a Nahuatl woman and CONAMI representative in San Luis Potosí, explains that despite these legislative efforts many indigenous women are still excluded from participating in communitarian assemblies and municipal governments, and when allowed to participate it is only to serve on domestically oriented committees such as health, education, and *PROSPERA*<sup>41</sup>. Laura herself has ran for office twice. In 2009 she ran for office as representative of San Luis Potosí in the National Congress, and in 2012 as senator in San Luis Potosí’s State Congress. On both occasions, Laura was invited to fill a gender quota by Partido de la Revolución Democrática (PRD). On both occasions, Laura received no funds from her political party for her campaign. On both occasions, Laura lost the election.<sup>42</sup>

Likewise, Isabel Gómez, a Tzeltal-Maya woman and CONAMI representative in Chiapas, explains that in 2015 when she ran for office as representative of Chiapas in the National Congress she received \$20,000 pesos (\$1,000 dollars approximately) to fund her campaign. She also lost the election. Today, Isabel Gómez is being harassed by members of her political party who want her to step down from the party.<sup>43</sup> This shows that gender quotas alone are insufficient to guarantee indigenous women’s rights to equal political participation.

Scholars like Michael Danielson, Todd Eisenstadt, and Jennifer Yelle have started to move away from arguments that indigenous culture alone explains women’s underrepresentation and have instead focused on the customary political systems in Mexico as one of the sources of exclusion. They argue that traditional systems of community service—known as the *cargo*

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<sup>40</sup> Constitution, *as amended*, Diario Oficial de la Federación [D.O.], art.2, 22 de mayo de 2015 (Mex.) (author’s translation)

<sup>41</sup> *Prospera* is a conditional cash transfer program in Mexico of which women are the main beneficiaries.

<sup>42</sup> Interview with Laura Hernández, Nahuatl Woman from San Luis Potosí, interview by Paulina Lucio Maymon, in person with tape recorder, January 18, 2018.

<sup>43</sup> Interview with Isabel Gómez, Tzeltal-Maya woman from Chiapas, interview by Paulina Lucio Maymon, in person with tape recorder, February 18, 2018.

system—often serve to block the supply of women deemed eligible to run for office. According to these scholars, women’s underrepresentation in municipal governments is explained by their lack of participation in the *cargo* system.<sup>44</sup> Laura Hernández explains that it is indeed very difficult for indigenous women to assume *cargo* positions, which require traveling and working many hours, as they cannot abandon their household and child care responsibilities, which men are unwilling to take. Isabel Gómez explains that in Tzeltal communities in Chiapas women are not allowed to become authorities in their communities because they are not landowners, which is a prerequisite to run for a *cargo* position. Isabel Gómez explains that many indigenous women in Chiapas have been working their lands for decades, while their husbands live and work in the United States, but their communities refuse to recognize them as landowners.<sup>45</sup> Although it is women who work the land, they cannot own or inherit it. Paradoxically, the most famous Zapatista slogan, which is visible all over Chiapas, states that “the land belongs to those who work it.”<sup>46</sup> In reality, the land belongs to those men who work it, or even worse to those men whose wives and daughters work it.

As this section has shown, despite the existing domestic and international law that protects indigenous women’s rights to political participation, indigenous women are still excluded from political participation and decision-making processes within and outside their communities. This exclusion is the result of a combination of factors including indigenous traditions, lack of education and training (many indigenous women are illiterate and do not speak Spanish), lack of support

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<sup>44</sup> While it varies by municipality, candidates for mayor tend to have scaled the ladder of *cargos* through completion of lower-level positions (village errand runner, cemetery caretaker, night watchperson), mid-level posts (town manager, public project supervisor, auxiliary judge), and higher-level positions (municipal delegate, overseer of religious ceremonies, member of the supervisory board, communal or *ejido* commissary. See Danielson, Eisenstadt, and Yelle, 8; Interview Laura Hernández. Many of these roles are traditionally filled by men.

<sup>45</sup> Interview with Isabel Gómez.

<sup>46</sup> “La tierra es de quien la trabaja” is a phrase coined by Mexican revolutionary Emiliano Zapata during the Mexican Revolution (1910 – 1920).

from their families and communities, lack of resources, harassment and persecution, and patriarchal structures. Norma Don Juan, a Nahua woman from San Luis Potosí and representative of CONAMI in Mexico City, observes: “Indigenous peoples do not need a representative democracy, but a multicultural one. (...) The exercise of our rights as women go hand in hand with the exercise of our rights as peoples. If our communitarian rights systems are invalidated, we remain in limbo. The rights established in international human rights treaties should be a beacon to help us build at the communitarian level.”<sup>47</sup>

## **ii. Sexual and Reproductive Rights**

The right to sexual and reproductive health<sup>48</sup> is an integral part of the right to health enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>49</sup> Article 12 of CEDAW stipulates that States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care to ensure women’s access to health care services including those related to family planning. Despite these international obligations, violations of indigenous women’s sexual and reproductive health rights are frequent in Mexico.

The case of Adriana Manzanares, a Tlapaneca woman from Guerrero, illustrates the relation between women’s sexual and reproductive health and the human rights to life, to privacy,

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<sup>47</sup> Interview with Norma Don Juan, Nahua Woman from San Luis Potosí, interview by Paulina Lucio Maymon, in person with tape recorder, January 18, 2018.

<sup>48</sup> Reproductive health, as defined by the World Health Organization (WHO), is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.” Sexual health, as defined by the WHO, is “a state of physical, emotional, mental and social well-being in relation to sexuality.” See World Health Organization (WHO), “Integrating Poverty and Gender into Health Programmes: A Sourcebook for Health Professionals (Sexual and Reproductive Health),” accessed February 8, 2018, <http://www.who.int/gender-equity-rights/knowledge/poverty-gender-in-health-programmes-sexual-reproductive-health/en/>; WHO, Sexual Health, Human Rights and the Law (2015), working definition on sexual health, sect. 1.1

<sup>49</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 2, 8, 11, 16, 21, 23, 34 and 36.

and to be free from discrimination. In 2006, at the age of 20, Adriana became pregnant for the third time. The father of her child was not her husband, who years earlier had migrated to the United States. Adriana suffered a miscarriage. She was accused of adultery and abortion by her father before a communitarian assembly, and the assembly sentenced her to be stoned and humiliated in public pursuant to communitarian rules. After the public shaming, Adriana was taken to the Public Prosecutor of Guerrero, where she was convicted for the crime of murder (abortion is considered a crime in Guerrero) and sentenced to 22 years in prison. She only spoke Tlapaneco, her indigenous language, and her trial was not translated from Spanish to Tlapaneco. After spending 7 years in prison, Adriana was finally released by a ruling from the Mexican National Supreme Court, which concluded that her procedural rights were violated from the beginning of the investigation.<sup>50</sup>

Martha Figueroa Mier, a human rights lawyer in Chiapas and founder of the Women's Group of San Cristobal de las Casas (COLEM), explains that there have been 19 cases in Chiapas in which women were sent to prison for aggravated murder by kinship as a result of spontaneous abortions or medical malpractice.<sup>51</sup> Further, Figueroa claims that indigenous girls and women are given away or forced into marriage as soon as they are able to bear children. Indigenous women have no say over who they marry and when. They have no say over the number of children they bear. They cannot decide when to start or stop having children.<sup>52</sup> During my trip to Chiapas, for instance, I met Juana, a 17-year-old girl who was carrying her 5-month-old-daughter, Regina, in a *rebozo* on her back. Juana's father gave her away in marriage when she was 16 years old. It is very

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<sup>50</sup> Juan Pablo Reyes, "Corte Indígena Resolverá Caso de Mujer Tlapaneca," *Excélsior*, January 22, 2014, <http://www.excelsior.com.mx/nacional/2014/01/22/939657>; Paris Martínez, "Corte Analizará Caso de Indígena Presa Por Aborto," *Animal Político* (blog), January 21, 2014, <http://www.animalpolitico.com/2014/01/suprema-corte-analizara-manana-caso-de-indigena-presa-por-aborto/>; Jesús Aranda, "Liberan a Indígena Guerrerense Encarcelada 7 Años Por Abortar," *La Jornada*, January 23, 2014.

<sup>51</sup> Interview with Martha Figueroa Mier, Human Rights Lawyer in Chiapas, interview by Paulina Lucio Maymon, in person with tape recorder, February 17, 2018.

<sup>52</sup> It is beyond the scope of this thesis to confirm Figueroa's claims.

likely that Regina, Juana's daughter, will suffer the same fate unless major legal, social, and cultural shifts occur.

Figueroa also believes that sexual abuse against girls and women is widespread in indigenous communities in Chiapas. As a remedy, the community forces the perpetrator to marry the abused girl, under the argument that "if he made her a woman, he has to be responsible for her and her child."<sup>53</sup> In other words, girls as young as 14 years old are forced to marry the older men who rape them.<sup>54</sup> Figueroa explains that she is currently representing a 4-year-old girl who was raped by a 21-year-old man on her way to school. The 4-year-old is now perceived as a "defiled" girl, who will not be able to find a husband when she comes of age. Her family is considering leaving not only their community but also the state of Chiapas to give her a fresh start. Her rapist was sentenced to 22 years in prison, after Figueroa discovered that his 17-year-old wife was also a victim of sexual abuse and forced to marry him when she was only 14. Since her husband is now in prison, the 17-year-old girl is now obliged to live with her husband's family until they find her another suitable match.<sup>55</sup>

Martha Figueroa explains that it is quite uncommon for sexual abuse and human trafficking (selling and buying of indigenous women) cases to reach the courts. Indigenous women do not want to put their grandfathers, fathers, brothers, and husbands in jail. They do not want to file a complaint in the judicial system because, in Figueroa's words, "women are not revengeful and have a duty to keep the family together and in peace."<sup>56</sup>

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<sup>53</sup> Interview with Martha Figueroa Mier.

<sup>54</sup> Chiapas Civil Code was reformed in 2016 to raise the minimum age to marry from 16 to 18 years. This statute is difficult to enforce given that most indigenous people marry under customary laws.

<sup>55</sup> Interview with Martha Figueroa Mier.

<sup>56</sup> Interview with Martha Figueroa Mier.

Indigenous women's sexual and reproductive rights are closely related to indigenous peoples' traditional preventive care, healing practices, and medicines. Laura Hernández, Norma Don Juan, and Isabel Gómez from CONAMI explain that Mexico is not abiding by its international obligation of taking into account indigenous peoples' traditional preventive care, healing practices, and medicines as stipulated in article 25 of the Indigenous and Tribal Peoples Convention of 1989 to which Mexico is party. They explain that *parteras* (midwives) play a central role in indigenous women's sexual and reproductive health. *Parteras* assist indigenous women to give birth, prepare food and traditional medicines for them, wash their clothes, and clean their houses. *Parteras* are also in charge of girls' sexual education in indigenous communities. Laura Hernández explains that the government is training *parteras* to apply intravenous serums and is providing them with surgical equipment. To be allowed to practice, however, the government obligates *parteras* to weekly visit a hospital to check and wash their equipment. This poses serious constraints to *parteras* as most of them live and work in remote communities with no easy or affordable access to hospitals. *Parteras* are not only constrained to practice, but they are also harassed by government officials. Laura Hernández is friends with a *partera* who was threatened by a government official to be sent to jail if a baby died during her birth assistance. Moreover, according to Laura, Norma, and Isabel, indigenous women who are treated by *parteras* are then denied access to hospitals and doctors. This is very problematic because most indigenous women not only want to be treated by *parteras*, but often have no choice as they live far away from hospitals, which then excludes them from receiving medical treatment in hospitals should complications arise during birth or after delivery.<sup>57</sup>

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<sup>57</sup> Interview Laura Hernández; Interview with Norma Don Juan; Interview with Isabel Gómez.



### **iii. Right to an Adequate Standard of Living**

The International Covenant on Economic, Social and Cultural Rights recognizes in article 11 the right of everyone to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions. Women's rights to land, property, food, water and sanitation, as well as work and social security, are intrinsically linked to the right to attain an adequate standard of living. All these rights are guaranteed under national and international laws, including the right to enjoy these rights on an equal basis with men, without discrimination.<sup>58</sup> Nevertheless, indigenous women in Mexico have very low standards of living and suffer from severe social disadvantages. In 2012, the National Council for Evaluation of Social Development Policy (CONEVAL) estimated that 78.6 percent of people who speak an indigenous language live in poverty compared to 43 percent of people who do not speak an indigenous language.<sup>59</sup>

Based on the findings of the Population Survey of 2015, INEGI published the following statistics on indigenous women's living standards in Mexico.<sup>60</sup> The average fertility rate for indigenous women is 3.1 babies per woman, which is higher than the average national rate of 2.3 babies per woman. On average, indigenous women attend school for 5.1 years, which is less than the average school attendance of non-indigenous women and indigenous men (9 years and 6.2 years, respectively). Indigenous women have the highest rates of illiteracy: 30 percent of indigenous women are illiterate, compared to 6.5 percent of non-indigenous women and 16.4

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<sup>58</sup> UN Office of the High Commissioner for Human Rights (OHCHR), Women's Rights are Human Rights, 2014, HR/PUB/14/2, accessed May 8, 2018, <http://www.refworld.org/docid/5566cfd14.html>

<sup>59</sup> Consejo Nacional de Evaluación de la Política de Desarrollo Social, "La Pobreza de La Población Indígena En México 2012" (México D.F: CONEVAL, 2014), [http://www.coneval.org.mx/Informes/Coordinacion/INFORMES\\_Y\\_PUBLICACIONES\\_PDF/POBREZA\\_POBLACION\\_INDIGENA\\_2012.pdf](http://www.coneval.org.mx/Informes/Coordinacion/INFORMES_Y_PUBLICACIONES_PDF/POBREZA_POBLACION_INDIGENA_2012.pdf).

<sup>60</sup> These data reflect the situation of the 3.8 million indigenous women who speak an indigenous language in Mexico.

percent of indigenous men.<sup>61</sup> Isabel Gómez, for instance, learned to read, write, and speak Spanish at age 26. Before that she had no opportunities to receive formal education. She grew up in a community that was 8 hours by bus and 1 day by foot away from the nearest town.<sup>62</sup>

Close to 20 percent of indigenous women between the ages of 15 and 19 are married, in comparison to 7.2 percent of indigenous men in the same age group.<sup>63</sup> According to the Organization for Economic Cooperation and Development (OECD), in 2013, Mexico held the highest maternal mortality rate in the OECD countries at 38.2 maternal deaths per 100,000 live births.<sup>64</sup> According to CDI, indigenous women between 15 and 39 years of age faced the highest risk of maternal mortality in the country at 62 deaths per 100,000 live births in 2010.<sup>65</sup>

In Mexico, large gender gaps exist in workforce engagement as shown by a 35.3 percentage point gap between Mexican women and men's workforce participation rates. Nearly 60 percent of working women work in informal jobs without social protection. Isabel Gómez has been unemployed since 2012 because without formal education, it is almost impossible to find a formal job.<sup>66</sup> Mexican women are slightly more likely to be poor than men.<sup>67</sup> In a survey carried out by CDI, poverty rates are specially pronounced for indigenous women. In terms of workforce participation, indigenous women reported that they assisted in farm work, commerce, and the sale of agricultural products. Their participation in the economy fluctuates with migration trends. The highest participation rates of indigenous women in the economy are in Nuevo León, Sinaloa,

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<sup>61</sup> Instituto Nacional de Estadística y Geografía (INEGI), "Encuesta Intercensal 2015."

<sup>62</sup> Interview with Isabel Gómez.

<sup>63</sup> Instituto Nacional de Estadística y Geografía (INEGI), "Encuesta Intercensal 2015."

<sup>64</sup> Organization for Economic Co-operation and Development (OECD), *Building an Inclusive Mexico* (Paris, 2017), 56, <http://www.oecd-ilibrary.org/content/book/9789264265493-en>.

<sup>65</sup> CDI, "Testimonios y Experiencias de Promotoras Indígenas Del Programa Organización Productiva Para Mujeres Indígenas (POPMI)" (2010), 13.

<sup>66</sup> Interview with Isabel Gómez.

<sup>67</sup> Organization for Economic Co-operation and Development (OECD), *Building an Inclusive Mexico*, 62.

Aguascalientes, Baja California Sur, Jalisco, and Mexico City, where demand for temporary field work is more prevalent.<sup>68</sup>

Indigenous women face several disadvantages in land tenure, inheritance rights, and membership in *ejidos* (areas of communal agriculture), which are key sources of income and wealth in rural areas. Land inheritance occurrences in 2011 were about four times higher for sons than daughters. An important obstacle to property ownership for indigenous women is language. Indigenous women are half as likely as indigenous men to speak Spanish, which poses a barrier to navigate the land registration system.<sup>69</sup> Moreover, as mentioned above, customary laws in many indigenous communities prohibit women from inheriting and owning land.<sup>70</sup>

Indigenous women's marginalization and exclusion, as indigenous peoples, is reflected in their lack of access to services, such as water and sewage infrastructure, technology, and appliances. For instance, 14 percent of indigenous households have dirt floors, compared to 4 percent of non-indigenous households. Only 38.4 percent of indigenous households have piped water, compared to 74.1 percent of non-indigenous households. Indigenous households have the lowest rates of technology access in the country: 53.2 percent of indigenous households have a refrigerator; 52.6 percent have a cell phone; 31.6 percent have washing machines; 16 percent have a car; 14 percent have a microwave; 12 percent have a home phone; 11 percent have a computer; and 9.8 percent have internet.<sup>71</sup>

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<sup>68</sup> CDI, "Testimonios y Experiencias de Promotoras Indígenas Del Programa Organización Productiva Para Mujeres Indígenas (POPMI)," 16.

<sup>69</sup> Organization for Economic Co-operation and Development (OECD), *Building an Inclusive Mexico*, 69.

<sup>70</sup> Interview Laura Hernández; Interview with Isabel Gómez; Interview with Martha Figueroa Mier.

<sup>71</sup> Instituto Nacional de Estadística y Geografía (INEGI), "Encuesta Intercensal 2015."

#### iv. Violence Against Indigenous Women

The Declaration on the Elimination of Violence against Women defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>72</sup> The Convention on the Elimination of All Forms of Discrimination against Women does not explicitly mention violence against women, but the Committee, in its General Recommendations No. 19 (1992) and No. 35 (2017) on violence against women, asserted that gender-based violence constitutes discrimination against women under article 1 of CEDAW. States parties to CEDAW are obligated to pursue by all appropriate means and without delay a policy of eliminating discrimination and gender-based violence against women, which results from the acts or omissions of both state and non-state actors.<sup>73</sup>

According to CDI, more than 42 percent of indigenous women reported that they had suffered physical violence in Mexico.<sup>74</sup> Further, as shown above, indigenous girls’ and women’s sexual and reproductive rights are pervasively violated in Mexico. In fact, the CEDAW Committee has recognized that forced abortion, forced pregnancy, criminalization of abortion, denial of safe abortion and post-abortion care, forced continuation of pregnancy, and mistreatment of women and girls seeking sexual and reproductive health information are forms of gender-based violence that may amount to torture or cruel, inhuman or degrading treatment.<sup>75</sup>

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<sup>72</sup> UN General Assembly, *Declaration on the Elimination of Violence against Women*, December 20, 1993, A/RES/48/104, accessed May 8, 2018, <http://www.refworld.org/docid/3b00f25d2c.html>

<sup>73</sup> CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, para. 18, CEDAW/C/GC/35 (2017), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>74</sup> CDI, “Testimonios Y Experiencias de Promotoras Indígenas Del Programa Organización Productiva Para Mujeres Indígenas (POPMI)” (Mexico: Comisión Nacional para el Desarrollo de los Pueblos Indígenas, 2010).

<sup>75</sup> CEDAW Committee, *General recommendation No. 35*.

Violations of their sexual and reproductive rights, however, are not the only, nor the worst, form of gender-based violence that indigenous women encounter in Mexico. Martha Figueroa claims that indigenous women are often victims of *feminicidio*, which is the murder of a woman or girl because of her gender.<sup>76</sup> She states that indigenous women are not only at risk of being beaten to death by their intimate partners, but they are also at risk of been perceived as “witches” and killed because of it. Figueroa explains that “witches are those horrible women who do not fulfill their gender roles and are also capable of accumulating knowledge, which they use for their benefit.”<sup>77</sup> These homicides are considered *feminicidios* because they are perpetrated only against women—men are not perceived as sorcerers and killed because of it.

Moreover, Martha Figueroa says that there are great inequalities between punishments imposed on men and women for the same crime. Women, like Adriana Manzanares, can be severely punished for adultery, whereas men are given a minor fine. Women can be banished from their husbands’ houses and left without compensation for their children.<sup>78</sup> Isabel Gómez still remembers when she was banished from her community in Ocosingo, Chiapas after having a child outside of marriage.<sup>79</sup> Other form of gender-based violence that indigenous women suffer is patrimonial violence in the constant denial of their property rights.

Indigenous women also face violence by state actors in the form of arbitrary detentions, torture, loss of land and displacement, forced migration, and sexual violence. In the Zapatista uprising in Chiapas, gender-based violence was a military counterinsurgency technique designed

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<sup>76</sup> In June 14, 2012, the Federal Penal Code of Mexico was amended to incorporate the crime of *feminicidio* (article 325), defined as the killing of a woman for gender reasons. Other states in Mexico, including Chiapas, have amended their penal codes to include the crime of *feminicidio*.

<sup>77</sup> Interview with Martha Figueroa Mier.

<sup>78</sup> June C. Nash, *Mayan Visions: The Quest for Autonomy in an Age of Globalization* (Routledge, 2002), 181.

<sup>79</sup> Interview with Isabel Gómez.

to subjugate the indigenous population.<sup>80</sup> The massacre that most tragically illustrates state violence occurred in 1997 in Acteal, Chiapas, where a paramilitary force attacked a group of 50 people, most of them women and children, suspected of supporting the Zapatistas. The victims were trapped and killed in a Catholic chapel. The perpetrators lacerated the women's breasts with machetes and stabbed in the stomach those who were pregnant.<sup>81</sup>

Organized crime has become a leading cause of violence against indigenous girls and women in Mexico. Laura Hernández claims that in San Luis Potosí, girls as young as 14 years old are sold to organized crime members to provide sex services for \$20, \$30, or \$50 pesos (between 1 and 3 U.S. dollars). Organized crime also forces girls to act as informants.<sup>82</sup> Mercedes Olivera, researcher at the University of Arts and Sciences of Chiapas, explains that *feminicidio* victims' bodies have appeared with "MST" or "S" carved into them, which is the symbol of the gang Maras Salvatruchas<sup>83</sup>.<sup>84</sup> In short, indigenous women suffer from numerous and severe forms of gender-based violence including patrimonial, psychological, physical, and sexual violence that may result in death.

#### **v. Access to Justice**

The right to access to justice is a well-established human right in both domestic and international statutes. The International Covenant on Civil and Political Rights establishes the rights to liberty and security of person and not to be subject of arbitrary arrest (Art. 9), to a fair trial (Art. 9(3)), to equality before the law (Art. 26), and to a remedy (Art. 2(3)(a)). ICCPR

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<sup>80</sup> Shannon Speed, "States of Violence: Indigenous Women Migrants in the Era of Neoliberal Multicriminalism," *Critique of Anthropology* 36, no. 3 (September 1, 2016): 280–301, <https://doi.org/10.1177/0308275X16646834>.

<sup>81</sup> Mercedes Olivera, "Violencia Femicida: Violence Against Women and Mexico's Structural Crisis," *Latin American Perspectives* 33, no. 2 (March 1, 2006): 104–14, <https://doi.org/10.1177/0094582X05286092>.

<sup>82</sup> Interview Laura Hernández. It is beyond the scope of this thesis to confirm Hernández's claims.

<sup>83</sup> Mara Salvatrucha is an international criminal gang that originated in Los Angeles, California, U.S. in the 1980s. Most members are of Central American origin, principally El Salvador.

<sup>84</sup> Olivera, "Violencia Femicida," 112.

specifically provides in article 9(5) that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” Likewise, CEDAW requires State parties to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination (Art. 2 (c)). The Indigenous and Tribal Peoples Convention of 1989 establishes in article 12 the obligation of States to translate legal proceedings to indigenous peoples.

Justice systems reflect society’s power imbalances, including those that disadvantage women. Both social and institutional barriers inhibit indigenous women’s access to justice including lack of knowledge of their rights, illiteracy, lack of information, geographical distance to judicial facilities, and dependence on male relatives for assistance and resources. Further, indigenous women face gender bias and stereotyping by state and communitarian authorities when it comes to investigating crimes committed against them.<sup>85</sup> Norma Don Juan from CONAMI says:

“We [indigenous peoples] make ourselves invisible as a strategy of protection against discrimination. Institutional discrimination is very strong in Mexico. Last year, CONAMI conducted a study on violence against indigenous women, and the testimonies of my colleagues were that when you identify yourself as indigenous, people treat you as they please. The stereotype is that we are ignorant and poor, so when we are asked if we are indigenous, many of us prefer to say no.”<sup>86</sup>

Indigenous women in Mexico have to navigate a dual legal system in which both statutory and customary laws apply. This dual system has been contributing and perpetrating discrimination, gender-based violence, child marriages, and cruel treatment against indigenous women. As shown above in the case of Adriana Manzanares, indigenous women have to face and are punished by

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<sup>85</sup> OHCHR, “Women’s Rights Are Human Rights,” 110.

<sup>86</sup> Interview with Norma Don Juan.

both justice systems. Adriana was first stoned and humiliated in public pursuant to communitarian rules, and then incarcerated for abortion, without a fair trial, pursuant to state laws.

Another case to illustrate indigenous women's inadequate access to justice in Mexico is the case of Jacinta Francisco Marcial. In March 2006, six agents of the Federal Investigation Agency (AFI) confiscated local market vendors' goods at the community of Santiago Mexquititlán, Querétaro. That same day the AFI Regional Chief and a prosecutor of the Attorney General's Office (PGR) arrived at Santiago Mexquititlán to facilitate dialogue with the market vendors. The incident ended after money for the damages had been delivered to the affected market vendors and all AFI agents left the town.<sup>87</sup> The six AFI agents filed a complaint with the PGR alleging that they had been kidnapped for several hours by protestors in Santiago Mexquititlán. In August 2006, Jacinta Francisco Marcial, an Otomí indigenous woman from Santiago Mexquititlán, was arrested and taken to the PGR office in Querétaro. Jacinta spoke basic Spanish and did not understand what was happening. During the judicial proceedings, her right to an interpreter was not upheld and the public defender never spoke to her regarding her rights and defense. According to Jacinta, only after arriving to prison, she first realized that she was being accused—together with Alberta Alcántara and Teresa González, two other Otomí women—of kidnapping six AFI agents during the incident in the market of Santiago Mexquititlán in March 2006. Jacinta, mother of six children, sold ice creams and soft drinks with her husband at the market. The only evidence implicating her in the events of that day was a photograph from a local newspaper taken when Jacinta was passing behind the crowd of protestors. No other evidence to prove her involvement was presented, and the AFI agents never appeared during the trial proceedings to confirm her

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<sup>87</sup> Amnesty International, "Release Jacinta Francisco Marcial," August 2009; Miguel Agustín Pro Juárez Human Rights Center, "Reparations for Jacinta Francisco Marcial," September 13, 2010, [http://www.centroprodh.org.mx/index.php?option=com\\_content&view=article&id=87:reparacion-del-dano-a-%20jacinta-francisco-marcial&catid=5:conferencias-de-prensa&Itemid=188&lang=en](http://www.centroprodh.org.mx/index.php?option=com_content&view=article&id=87:reparacion-del-dano-a-%20jacinta-francisco-marcial&catid=5:conferencias-de-prensa&Itemid=188&lang=en).



identification. Jacinta Francisco Marcial was sentenced to 21 years of prison for the kidnapping of six AFI agents.<sup>88</sup> In September 2009, after spending 37 months in prison, Jacinta was finally released. Her defense team filed a petition for reparations against the PGR. In 2016, the Third Collegiate Court in Administrative Matters of Mexico City ruled that the PGR had to repair the damages caused to Jacinta, including a public apology. In 2017, the PGR carried out a public act of recognition of innocence, apologizing to Jacinta Francisco, Alberta Alcántara, and Teresa González who waited for eleven years to obtain justice.<sup>89</sup>

Another internationally known case of indigenous women's inadequate access to justice in Mexico is the case of Inés Fernández Ortega and Valentina Rosendo Cantú. In February 2002, Inés and Valentina, two Me'phaa indigenous women from the state of Guerrero, were raped and beaten by Mexican soldiers. Although they reported the assaults to the authorities, no proper investigation was conducted, and justice was systematically denied in their cases. After reporting the attacks, Inés and Valentina became targets of harassment and hostility by Mexican authorities. In August 2010, the Inter-American Court of Human Rights issued two judgments against Mexico, ordering a full investigation by civilian authorities, as well as reforms to the military justice system. The court ruled that the women were victims of sexual violence by the military and that Mexico had violated their human rights by denying them access to justice. The court also ordered that reparations be paid and protection provided to Inés and Valentina.<sup>90</sup>

The cases, stories, and testimonies presented in this section illustrate the unique human rights violations and forms of discrimination and disadvantage that occur against indigenous

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<sup>88</sup> Amnesty International, "Release Jacinta Francisco Marcial"; Miguel Agustín Pro Juárez Human Rights Center, "Reparations for Jacinta Francisco Marcial."

<sup>89</sup> Miguel Agustín Pro Juárez Human Rights Center, "Materiales Básicos. Jacinta Francisco Marcial," 2017, [http://www.centroprodh.org.mx/index.php?option=com\\_content&view=category&id=237&layout=blog&Itemid=19%206&lang=es](http://www.centroprodh.org.mx/index.php?option=com_content&view=category&id=237&layout=blog&Itemid=19%206&lang=es).

<sup>90</sup> "Justice for Ines Fernandez Ortega and Valentina Rosendo Cantú!," Nobel Women's Initiative, January 17, 2014, <https://nobelwomensinitiative.org/justice-for-ines-fernandez-ortega-and-valentina-rosendo-cantu/>.

women in Mexico. They also show the importance of identifying and understanding the intersection of indigenous women's identities, including their gender, ethnicity, socioeconomic status, and education level, in the pursuit for justice and equality. As indigenous peoples, indigenous women suffer from the same discrimination as indigenous men: they are marginalized from the wider society; their resources, culture, and traditions are often threatened with degradation and destruction; they have limited or no access to education and health care; and they are often abused by authorities and armed forces. Indigenous women also face human rights violations that are specifically related to their gender such as sexual abuse, human trafficking, child marriage, inadequate reproductive health care, and domestic violence.

Nonetheless, the cases presented in this section also show that indigenous women are themselves pressing to be heard and their demands can no longer be disregarded. Although limited, there are means to protect and defend indigenous women's rights in Mexico including human rights advocacy and legal proceedings at the national and international level. In the following chapter, the theory of intersectionality will be explained in relation to international human rights law as a framework to protect indigenous women's rights in Mexico.

## CHAPTER II.

### INTERSECTIONALITY AND INTERNATIONAL LAW

#### A. The Theory of Intersectionality

In 1989, Kimberle Crenshaw, Professor at Columbia Law School and the University of California, Los Angeles, coined the term intersectionality and laid the groundwork for the concept in her article “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics.” Crenshaw focused on the experiences of black women in the United States to explain how they “are theoretically erased” by the single axis framework that is dominant in antidiscrimination law, feminist theory, and antiracist politics.<sup>91</sup> Crenshaw writes:

“I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.”<sup>92</sup>

An intersectional analysis requires to pay special attention to the experiences of persons who exist at the intersection of more than one identity. These can include the two analyzed by Crenshaw—sex and race—as well as age, ethnicity, language, sexual orientation, religion, socioeconomic class, and status as an indigenous person. According to the theory, persons existing

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<sup>91</sup> Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* 1989, no. 1 (1989), p://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8.

<sup>92</sup> Crenshaw, 149.

where one identity marker interacts with another face distinct, sometimes unique, forms of discrimination.<sup>93</sup> Crenshaw presented the following analogy to explain intersectionality:

“Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars travelling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.”<sup>94</sup>

Crenshaw clarifies that intersectionality is not about the sum of multiple identities. Rather, intersectionality examines gaps in legal recognition of those persons existing in the overlap of multiple identities.<sup>95</sup> An intersectional approach requires understanding the context and legal structures that contribute to the exclusion of some people and not others.<sup>96</sup>

Aisha Nicole Davis, a Columbia University J.D alumna, explains that intersectionality can be applied to the existing international human rights framework to analyze, understand, and redress human rights violations. Doing so would address the current lack of representation of people who fall within multiple protected categories simultaneously.<sup>97</sup> The compartmentalization of international human rights regulations in categories, such as race and gender discrimination, can produce an analysis of human rights abuses that may marginalize the experiences of persons located at the intersection.<sup>98</sup> For instance, indigenous women are mentioned only twice in the Indigenous and Tribal Peoples Convention of 1989 and are not mentioned at all in CEDAW.

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<sup>93</sup> Aisha Nicole Davis, “Intersectionality and International Law: Recognizing Complex Identities on the Global Stage Student Note,” *Harvard Human Rights Journal* 28 (2015): 209.

<sup>94</sup> Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” 149.

<sup>95</sup> Davis, “Intersectionality and International Law,” 209.

<sup>96</sup> Southbank Centre, *Kimberlé Crenshaw - On Intersectionality - Keynote - WOW 2016*, accessed April 17, 2017, <https://www.youtube.com/watch?v=-DW4HLgYPIA>.

<sup>97</sup> Davis, “Intersectionality and International Law,” 208.

<sup>98</sup> Emma Buxton-Namisnyk, “Does an Intersectional Understanding of International Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence against Indigenous Women in Australia General Commentary,” *Australian Indigenous Law Review* 18 (2015 2014): 123.

Indigenous women's needs and experiences are precisely at the intersection of these two human rights treaties. The challenge thus is to understand how different human rights treaties interact and can be applied to protect those whose rights are frequently violated.<sup>99</sup>

The international human rights framework has also been criticized of not being representative of all women. In trying to universalize women's rights, cultural, ethnic, and religious differences have been overlooked.<sup>100</sup> Integrating intersectionality into international human rights laws would make them more representative and suitable to serve their targeted communities.<sup>101</sup> Johanna Bond, Professor of Law at Washington and Lee University, explains that "if qualified slightly, universalism can accommodate an understanding of women's human rights that recognizes that rights are at once universal and different as experienced by different groups of women in different places and different historical moments." Women's human rights discourse must be particularized enough to encourage the recognition that different groups of women experience diverse forms of human rights violations. The theory of intersectionality provides a framework for analyzing women's human rights in a way that fully integrates the experiences of women who suffer distinct forms of human rights abuses because of their intersecting identities as in the case of indigenous women.<sup>102</sup>

The United Nations has incorporated the concept of intersectionality in at least two international human rights treaties. In 2000, the Committee on the Elimination of Racial Discrimination (CERD Committee) in its General Recommendation 25 introduced the gender-

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<sup>99</sup> M. Celeste McKay and Craig Benjamin, "A Vision for Fulfilling the Indivisible Rights of Indigenous Women," in *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action*, by Jackie Hartley, Paul Joffe, and Jennifer Preston (Saskatoon: Purich Pub., 2010), 159.

<sup>100</sup> Johanna Brenner, "Transnational Feminism and The Struggle for Global Justice," *New Politics; New York* IX, no. 2 (Winter 2003): 27.

<sup>101</sup> Davis, "Intersectionality and International Law."

<sup>102</sup> Johanna E. Bond, "International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations," *Emory Law Journal; Atlanta* 52, no. 1 (Winter 2003): 71.

related dimensions of racial discrimination.<sup>103</sup> In 2010, in General Recommendation 28 on the core obligations of State parties, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted the term “intersectionality” as:

“a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such *intersecting forms of discrimination* and their compounded negative impact on the women concerned and prohibit them.”<sup>104</sup>

Davis criticizes the United Nations approach to intersectionality for creating “subcategories” within the committees’ general mandate, which perpetuates the problems endemic to the antidiscrimination and feminist approaches that Crenshaw critiqued. Thus, according to Davis, “women who experience human rights violations based on the intersection of ethnicity or race and gender will have their cases examined from a framework that views their claim as less than ‘pure.’”<sup>105</sup> She believes that the “subcategories” created by the CEDAW and CERD Committees within the existing mechanisms will further “marginalize the experiences of nonwhite, nonwestern women.”<sup>106</sup> Undeniably, the U.N. has a long way ahead in the road of intersectionality.

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<sup>103</sup> The first provision of CERD General Recommendation 25 reads: “The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.” CERD Committee, General recommendation XXV on gender-related dimensions of racial discrimination, 56<sup>th</sup> Sess, (2000), accessed May 8, 2018, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=en)

<sup>104</sup> CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 18, CEDAW/C/GC/28 (2010), accessed May 8, 2018, <http://www.refworld.org/docid/4d467ea72.html>

<sup>105</sup> Davis, “Intersectionality and International Law,” 222.

<sup>106</sup> Davis, 222.

This research, however, aims to show that the CEDAW Committee's General Recommendations and Concluding Observations can be useful guidelines for an intersectional application of CEDAW aimed at protecting and defending indigenous women against the particular forms of discrimination that they experience.

## **B. Human Rights International Law and Indigenous Women**

Intersectionality is consistent with the principle that all human rights are universal, indivisible, interdependent, and interrelated.<sup>107</sup> As shown throughout this thesis, indigenous women in Mexico suffer from multiple and unique forms of discrimination and human rights violations as a result of their gender, race, education level, socioeconomic status, and other characteristics. In order to effectively protect indigenous women's rights, it is imperative to interpret and apply human rights treaties jointly. The right to health, for instance, is enshrined in ICESCR, while the right to equal access to health in CEDAW and the right to traditional healthcare and medicine in ILO Convention 169. Therefore, to protect indigenous women's right to health effectively and comprehensively, it is paramount to understand the different provisions and States' obligations under ICESCR, CEDAW, and ILO Convention 169 as a minimum. Since Mexico has

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<sup>107</sup> McKay and Benjamin, "A Vision for Fulfilling the Indivisible Rights of Indigenous Women," 161.

ratified all major human rights treaties<sup>108</sup> and these are self-executing<sup>109</sup> and at the same hierarchical level as the Mexican Constitution, it is fundamental to adopt an intersectional approach to analyze and apply them in a relevant manner to indigenous women.

All human rights treaties are important for advancing and protecting the rights of indigenous women. Nonetheless, the scope of this research is to analyze CEDAW from an intersectional perspective in the light of the Indigenous and Tribal Peoples Convention of 1989, the United Nations Declaration on the Rights of Indigenous Peoples, and CEDAW Committee's recommendations and observations. If CEDAW is interpreted and applied with an intersectional perspective, it will become an effective framework to protect indigenous women both as members of indigenous communities and as individuals. In the following paragraphs, some of the key human rights standards enshrined in ILO Convention 169 and the UNDRIP will be examined.

The International Labor Organization adopted the Indigenous and Tribal Peoples Convention in 1989, "noting that in many parts of the world indigenous peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded."<sup>110</sup>

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<sup>108</sup> Mexico is a State party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol of the Convention against Torture (CAT-OP), International Covenant on Civil and Political Rights (ICCPR), Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (ICCPR-OP2-DP), Convention for the Protection of All Persons from Enforced Disappearance (CED), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Convention on the Rights of the Child (CRC), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC), Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC), and Convention on the Rights of Persons with Disabilities (CRPD). See: Mexico's Ratification Status of Human Rights Treaties accessed May 8, 2018: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=112&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=112&Lang=EN)

<sup>109</sup> Self-executing means that the implementation of human rights treaties in Mexico does not require the issuance of domestic laws.

<sup>110</sup> Convention 169 replaced Convention 107, The Indigenous and Tribal Peoples Convention [ILO Convention 169], International Labour Conf. 76th Sess. Prov. Rec. 25 (1989)



On September 5, 1990, a year after its adoption, Mexico ratified the ILO Convention 169, which to date has 22 State parties.<sup>111</sup>

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly in 2007 with 144 votes in favor—including Mexico's—4 votes against<sup>112</sup> and 11 abstentions<sup>113</sup>.<sup>114</sup> U.N. Declarations, although not legally binding, indicate that the parties agree to adopt certain principles and aspirations. While the 1948 Universal Declaration of Human Rights, for example, was not originally intended to have binding force, its provisions have gained binding character as customary law.<sup>115</sup> Together the ILO Convention 169 and the UNDRIP provide a comprehensive framework to protect indigenous peoples' fundamental rights.

Article 1 of the UNDRIP states that “indigenous peoples have the right to the full enjoyment, as collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.”<sup>116</sup> Article 2 of ILO Convention 169 establishes States' responsibility to develop, with the participation of indigenous peoples, measures to promote the full realization of the social, economic, and cultural rights of these peoples and eliminate the socio-economic gaps that may exist between them and other members of society.<sup>117</sup> Under article

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<sup>111</sup> ILO, “Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169),” n.d., [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314).

<sup>112</sup> Australia, Canada, New Zealand and the United States voted against the adoption of the UNDRIP.

<sup>113</sup> Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine abstained.

<sup>114</sup> Division for Social Policy and Development of Indigenous Peoples, *The United Nations Declaration on the Rights of Indigenous Peoples*, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>115</sup> United Nations Children's Fund [UNICEF], Definition of Key Terms, <https://www.unicef.org/french/crc/files/Definitions.pdf>

<sup>116</sup> United Nations Declaration on the Rights of Indigenous Peoples art. 1, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (October 2, 2007) [hereinafter UNDRIP].

<sup>117</sup> ILO Convention 169, art 2.

4 of ILO Convention 169, States are obligated to adopt special measures for safeguarding the persons, institutions, property, labor, culture, and environment of indigenous peoples.<sup>118</sup>

Indigenous women, as explained above, are discriminated against both inside and outside their communities. Therefore, the right to equality and non-discrimination are important in relation to equality between non-indigenous peoples and indigenous peoples and between indigenous women and indigenous men.<sup>119</sup> Article 22 of the UNDRIP establishes that “States shall take measures, in conjunction with indigenous peoples, to ensure that all indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”<sup>120</sup> Article 3 of ILO Convention 169 also states that indigenous men and women shall enjoy and exercise their human rights without discrimination.<sup>121</sup>

Article 3 of the UNDRIP explicitly recognizes the right to self-determination of indigenous peoples.<sup>122</sup> Articles 4, 5, and 7 of the UNDRIP elaborate upon the right of self-determination in relation to the collective rights to autonomy, to self-government, to have distinct legal institutions, and to live in freedom, peace, and security.<sup>123</sup> Collective rights, necessary to the survival and identities of indigenous peoples, are complementary conditions that enable the enjoyment of individual rights. The right to self-determination is critical to indigenous women to address the historic marginalization and abuse experienced by their communities.<sup>124</sup> The assertion of collective rights is a strategic approach to the realization of indigenous women’s rights.<sup>125</sup> This has been

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<sup>118</sup> ILO Convention 169, art 4.

<sup>119</sup> M. Céleste McKay, “International Human Rights Standards and Instruments Relevant to Indigenous Women,” *Canadian Woman Studies; Downview* 26, no. 3/4 (Winter/Spring 2008): 147–48.

<sup>120</sup> UNDRIP, art. 22.

<sup>121</sup> ILO Convention 169, art 3.

<sup>122</sup> UNDRIP, art. 3.

<sup>123</sup> UNDRIP, art. 4, 5, 7.

<sup>124</sup> McKay, “International Human Rights Standards and Instruments Relevant to Indigenous Women,” 148–49.

<sup>125</sup> Helen Tugendhat and Eleanor Dictaan-Bang-oa, eds., *Realizing Indigenous Women’s Rights: A Handbook on the CEDAW* (Baguio City, Philippines: Tebtebba Foundation, 2013), ix.

expressed by the International Indigenous Women's Forum in its Beijing + 10 Declaration, which states:

“We maintain that the advancement of Indigenous Women's human rights is inextricably linked to the struggle to protect, respect, and fulfill both the rights of our Peoples as a whole and our rights as women within our communities and at the national and international level.”<sup>126</sup>

Likewise, Norma Don Juan from CONAMI explains that indigenous women must fight a parallel struggle: “one against patriarchal structures within our own communities and the other against a foreign system [national and international] that places greater emphasis on our individual rather than on our collective rights.”<sup>127</sup>

The right to self-determination, along with the right to free, prior, and informed consent and the right to participate in decision-making, should be used as a foundational principle to recognize and respect the political and legal systems of indigenous peoples. Article 34 of the UNDRIP establishes that indigenous peoples have the right to promote and maintain their distinctive institutions, customs, practices, and juridical systems, in accordance with international human rights standards.<sup>128</sup> Likewise, article 8 of ILO Convention 169 stipulates that indigenous peoples have the right to retain their own customs and institutions, where these are not incompatible with the national legal system and international human rights law.<sup>129</sup> Article 6 of ILO Convention 169 enshrines States' obligation to consult with the peoples concerned when a policy or legislation that may affect them is under consideration.<sup>130</sup> Indigenous peoples also have the right

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<sup>126</sup> International Indigenous Women's Forum, “Declaration Bringing Indigenous Perspectives to the International Arena: An Indigenous Women's Conference” (2005), available at Helen Tugendhat and Eleanor Dictaan-Bang-oa, eds., *Realizing Indigenous Women's Rights: A Handbook on the CEDAW* (Baguio City, Philippines: Tebtebba Foundation, 2013), 4–14.

<sup>127</sup> Interview with Norma Don Juan.

<sup>128</sup> UNDRIP, art. 34.

<sup>129</sup> ILO Convention 169, art 8.

<sup>130</sup> ILO Convention 169, art 6.

to decide their own priorities for the process of development under article 7 of ILO Convention 169.<sup>131</sup> The right of indigenous women to participate in decision-making processes is critical to the development, implementation, and evaluation of policy and legislation affecting indigenous peoples. Indigenous women's individual rights can be protected if self-determining indigenous communities are accountable to act in a manner that is respectful of human rights norms, including equality and non-discrimination.<sup>132</sup>

The right to lands, territories, and resources, established in article 26 of the UNDRIP and articles 13, 14, and 15 of ILO Convention 169, is central to ensure that all indigenous peoples own property without discrimination from their communities or arbitrary expropriation from the State.<sup>133</sup> Article 16 of ILO Convention 169 stipulates the right to compensation in case of relocation of indigenous peoples, which can only be considered as an exceptional measure.<sup>134</sup> Article 18 of ILO Convention 169 establishes that States shall prevent and penalize unauthorized intrusion or use of the lands of indigenous peoples.<sup>135</sup>

The right to an adequate standard of living is important to improve the socioeconomic status of indigenous women and to ensure their basic needs.<sup>136</sup> Article 20 of ILO Convention 169 establishes States' responsibility to adopt special measures to ensure that indigenous peoples have access to employment, equal remuneration, equal labor protection, medical and social assistance, and the rights to association and to conclude collective agreements.<sup>137</sup> Further, article 21 and 22

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<sup>131</sup> ILO Convention 169, art 7.

<sup>132</sup> McKay, "International Human Rights Standards and Instruments Relevant to Indigenous Women," 148.

<sup>133</sup> UNDRIP, art. 26; ILO Convention 169, art 13, 14, 15.

<sup>134</sup> ILO Convention 169, art 16.

<sup>135</sup> ILO Convention 169, art 18.

<sup>136</sup> McKay, "International Human Rights Standards and Instruments Relevant to Indigenous Women," 150.

<sup>137</sup> ILO Convention 169, art 20.

of ILO Convention 169 provide that States are responsible of offering voluntary vocational training programs for indigenous peoples based on their environment, social, and cultural conditions.<sup>138</sup>

States are also obligated, under article 25 of ILO Convention 169, to provide adequate health services in cooperation with the peoples concerned, taking into account their traditional preventive care, healing practices, and medicines. The healthcare system shall give preference to the training and employment of local community health workers.<sup>139</sup>

Further, indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages pursuant to article 14 of the UNDRIP.<sup>140</sup> States' shall develop education programs along with the peoples concerned to address their specific needs and incorporate their stories, knowledge, value systems, and technologies, according to article 27 of the ILO Convention.<sup>141</sup> Indigenous peoples have the right, under article 28 of the ILO Convention, to be taught to read and write in both their indigenous language and in the country's official language(s).<sup>142</sup> Article 30 of the ILO Convention establishes indigenous peoples' right to be informed of their rights and duties, especially those that derive from the convention. If necessary, States shall translate laws and treaties to indigenous languages and disseminate them widely.<sup>143</sup>

The right to practice and revitalize their cultural traditions and customs is essential to maintain, protect, and develop indigenous peoples' archeological and historical sites, artefacts, designs, ceremonies, technologies, and arts, as established in article 11 of the UNDRIP.<sup>144</sup> The ILO Convention enshrines in article 23, States' obligation to ensure that indigenous peoples'

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<sup>138</sup> ILO Convention 169, art 21, 22.

<sup>139</sup> ILO Convention 169, art 25.

<sup>140</sup> UNDRIP, art. 14.

<sup>141</sup> ILO Convention 169, art 27.

<sup>142</sup> ILO Convention 169, art 28.

<sup>143</sup> ILO Convention 169, art 30.

<sup>144</sup> UNDRIP, art. 11.

traditional and community-based activities—including handicrafts, hunting, fishing, gathering, and others—are strengthened and promoted.<sup>145</sup> The right to intellectual property, stipulated in article 31 of the UNDRIP, over indigenous peoples’ cultural heritage, traditional knowledge, and traditional cultural expressions is also fundamental for indigenous women’s subsistence.<sup>146</sup> For instance, indigenous women from Mexico, Guatemala, and Bolivia are fighting to obtain collective intellectual property rights over their traditional textiles and handicrafts to protect their identity and economic benefits.<sup>147</sup>

Finally, the rights to justice and equal protection under the law are of paramount importance to indigenous peoples. Article 9 of the ILO Convention establishes that the methods customarily practiced by indigenous peoples for dealing with offenses shall be respected to the extent compatible with the national legal system and international human rights. When imposing penalties on indigenous peoples, States shall take into account their economic, social, and cultural characteristics. The Convention states that methods of punishment other than confinement in prison shall be preferred.<sup>148</sup> ILO Convention 169 establishes, in article 12, the right of indigenous peoples to pursue legal proceedings for the protection of their rights. States in turn are responsible of providing language interpretation services and any other effective means to ensure indigenous peoples’ access to justice.<sup>149</sup>

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<sup>145</sup> ILO Convention 169, art 23.

<sup>146</sup> ILO Convention 169, art 31.

<sup>147</sup> Adelfo Regino Montes, Propiedad intelectual colectiva de los pueblos indígenas, *La Jornada*, November 28, 2015, at <http://www.jornada.unam.mx/2015/11/28/politica/015a1pol>; Naomi Larsson, Inspiration or Plagiarism? Mexicans Seek Reparations for French Designer’s Look-Alike Blouse, *The Guardian*, June 17, 2015 at <https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant>; Video: Cholita Fashion in Bolivia (Telesur 2015) at <https://videoseinglish.telesurtv.net/video/480539/cholita-fashion-in-bolivia/>; Video: Las Tejedoras Mayas se defienden (AJ+ Español 2017) at <https://www.facebook.com/ajplusespanol/videos/1484566414929036/>

<sup>148</sup> ILO Convention 169, art 9.

<sup>149</sup> ILO Convention 169, art 12.

The rights presented in this section are illustrative, not exhaustive, and should be read jointly with CEDAW provisions and CEDAW Committee’s recommendations and observations—analyzed in the next chapter—to advance indigenous women rights. Intersectionality is a tool that could help indigenous women to fully exercise their individual and collective rights. It is an approach that endorses the principle “that indigenous peoples are equal to all others, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,” as established in the UNDRIP preamble.<sup>150</sup> Intersectionality could help human rights lawyers and practitioners to strike a balance between universalism and cultural relativism to guarantee that all the human rights and freedoms are equally exercised by male and female indigenous persons and by indigenous and non-indigenous peoples.

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<sup>150</sup> UNDRIP, preamble.

### **CHAPTER III.**

#### **THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

In this section, intersectionality will be used to analyze the Convention on the Elimination of all Forms of Discrimination Against Women as the only universal international treaty that specifically addresses women's rights. The main argument is that if interpreted and applied with an intersectional perspective, in the light of the Indigenous and Tribal Peoples Convention of 1989, the UNDRIP, and CEDAW Committee's recommendations and observations, CEDAW can be an effective legal framework to protect indigenous women's rights in Mexico. After the Human Rights Amendments of 2011, the Mexican Constitution explicitly recognizes in article 1 that "the provisions relating to human rights shall be interpreted according to the Constitution and the international treaties on the subject, working in favor of the broader protection of people at all times."<sup>151</sup> This means that indigenous women can use CEDAW and ILO Convention 169—or any other international human rights treaty ratified by Mexico—to defend, protect, and advance their human rights and freedoms in the country.

CEDAW was adopted by the United Nations General Assembly in 1979 and entered into force in 1981, after the ratification of the twentieth State. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention provides the basis for realizing equality between women and men through women's equal access to political and public life, education, health, and employment. States parties agree to take all appropriate measures, including legislation and

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<sup>151</sup> Constitution, *as amended*, Diario Oficial de la Federación [D.O.], art.1, 30 de noviembre de 2012 (Mex.).



temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.<sup>152</sup> Under article 17 of CEDAW, the Committee on the Elimination of Discrimination against Women, consisting of 23 experts, was established to monitor and evaluate the implementation of the Convention. Article 1 of CEDAW defines discrimination against women as:

“[...] any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>153</sup>

As of March 2018, CEDAW has been ratified by 189 States—the second highest number of ratifications of any human rights treaty only surpassed by the Convention on the Rights of the Child.<sup>154</sup> Mexico was one of the first countries to ratify CEDAW on March 23, 1981.<sup>155</sup>

### **A. An Intersectional Analysis of CEDAW**

All areas of women’s rights provided by CEDAW are relevant for indigenous women. The Convention text, however, contains no specific reference to indigenous women. It also does not address their particular human rights concerns including collective rights, the right to a life free of

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<sup>152</sup> UN Women, Convention on the Elimination of All Forms of Discrimination against Women, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>153</sup> CEDAW, art. 1.

<sup>154</sup> Susanne Zwingel, *Translating International Women’s Rights: The CEDAW Convention in Context* (London: Palgrave Macmillan, 2016), 65, <http://newcatalog.library.cornell.edu/catalog/9702465>.

<sup>155</sup> Upon signature of the CEDAW, Mexico submitted the following Declaration: “In signing ad referendum the Convention on the Elimination of All Forms of Discrimination Against Women, which the General Assembly opened for signature by States on 18 December 1979, the Government of the United Mexican States wishes to place on record that it is doing so on the understanding that the provisions of the said Convention, which agree in all essentials with the provisions of Mexican legislation, will be applied in Mexico in accordance with the modalities and procedures prescribed by Mexican legislation and that the granting of material benefits in pursuance of the Convention will be as generous as the resources available to the Mexican State permit.” See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en)

violence, the right to peace, the right to culture, the right to sustainable development, and the right to inheritance. In contrast, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa not only enshrines all these rights, but also postulates special protections for elderly women, women with disabilities, women in distress, and widows.<sup>156</sup>

During the “Celebrating Diversity, Heightening Solidarity Conference” held in the Philippines in 2004, indigenous women from Asia reviewed CEDAW provisions and noted several areas of concern and reflection. These concerns, which are also relevant to indigenous women in Mexico, are summarized in the following table created by Eleanor Dictaan-Bang-oa and Helen Tugendhat for the book “Realizing Indigenous Women’s Rights: A Handbook on the CEDAW”:

Articles	CEDAW Provisions	Concerns Raised by Indigenous Women
<b>Article 1</b>	<b>Discrimination</b> “discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”	“Indigenous women are oppressed because of race, ethnicity, gender, and class simultaneously and they must be addressed together.”
<b>Article 4</b>	<b>Temporary Special Measures</b> <ul style="list-style-type: none"> <li>• Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.</li> <li>• Measures aimed at protecting maternity shall not be considered discrimination.</li> </ul>	“Temporary special measures should include opportunities for appropriate and sustained training and development, or provision of spaces, for indigenous women to build their capacities towards full and effective participation.”
<b>Article 6</b>	<b>Trafficking, Exploitation, and Prostitution</b> “State Parties should take appropriate measures, including legislation, to suppress all	“CEDAW only speaks of ‘suppressing’ all forms of traffic and exploitation of prostitution of women. Indigenous women call for governments and intergovernmental organizations to eliminate and

<sup>156</sup> Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, March 28, 2003, AU-AHSG 2<sup>nd</sup> Ord. Sess., accessed May 8, 2018, [http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf)

	form of traffic in women and exploitation of prostitution of women.”	address the root causes of trafficking, prostitution, and other forms of exploitation of women, including poverty, social marginalization, and lack of State political willingness to proactively address these issues. For indigenous women, poverty is a function of their displacement from their lands and territories and their exclusion from development initiatives.”
<b>Article 7-8</b>	<b>Political, Public Life and International Representation</b> <ul style="list-style-type: none"> <li>• Right to vote and hold public office.</li> <li>• Right to participate in government policy decision-making and implementation.</li> <li>• Right to participate in NGOs and civil society groups.</li> <li>• Right to represent the State and participate in international organizations.</li> </ul>	<ul style="list-style-type: none"> <li>• “Participation in political and public life is limited due to the double burden of indigenous women and the lack of capacities to engage.</li> <li>• Participation in political and public life must also be promoted and supported through indigenous peoples own self-selected representatives, institutions, or processes.</li> <li>• The concept of free, prior and informed consent is an essential element in participation or non-participation that adheres to the right to self-determination of indigenous peoples. This applies to all areas of decision-making from personal to public matters and requires full and effective information as basis for sound decisions.”</li> </ul>
<b>Article 9</b>	<b>Nationality</b> <ul style="list-style-type: none"> <li>• Equal rights to acquire, change or retain nationality regardless of marriage to a foreigner.</li> <li>• Equal rights with men with respect to the nationality of their children.</li> </ul>	“The misconception of indigenous peoples’ right to self-determination as tantamount to secession impedes the official recognition by States of the existence of a diversity of indigenous peoples within States/nations.”
<b>Article 10</b>	<b>Education</b> <ul style="list-style-type: none"> <li>• Right to equal opportunity in all levels of education.</li> <li>• Access to the same facilities, equipment, teachers, examinations, scholarships, and grants available to men.</li> <li>• Removal of stereotypes through education and revision of learning/teaching materials.</li> <li>• Participation in sports and cultural activities.</li> <li>• Information and advice on family planning.</li> </ul>	<ul style="list-style-type: none"> <li>• “Access and availability of basic education is a problem among indigenous women due to several factors, including geographical isolation, inability of government services to reach them, poverty, conflict, security issues, and preference for boys.</li> <li>• The sensitivity and capacity of the mainstream education system needs strengthening to be able to promote indigenous identities and culture.</li> <li>• Indigenous learning systems should be promoted.”</li> </ul>
<b>Article 11</b>	<b>Employment</b> <ul style="list-style-type: none"> <li>• The right to free choice of profession and employment.</li> <li>• The right to the same employment opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>• “Economic security is not just based on cash income and employment. For most indigenous women, economic security means retaining their land as a basic livelihood source and that</li> </ul>

	<ul style="list-style-type: none"> <li>• Equal pay for work of equal value.</li> <li>• Equal treatment at workplace and equal evaluation criteria.</li> <li>• Health and safety protection including from harmful work during pregnancy.</li> <li>• Not to be dismissed/terminated on grounds of pregnancy or marital status.</li> <li>• Maternity leave with pay without loss of former employment, seniority or social allowances.</li> <li>• Social services to support the combination of family and work responsibilities.</li> </ul>	<p>this same land feeds their grandchildren in the future.</p> <ul style="list-style-type: none"> <li>• The destruction of and dislocation from ancestral lands and territories therefore disenfranchises them, and the future generations, of their right to life and livelihood.</li> <li>• In the areas of formal economy, indigenous women often lack the basic preconditions for employment such as formal and high education requirements.”</li> </ul>
<b>Article 12</b>	<b>Healthcare and Family Planning</b> <ul style="list-style-type: none"> <li>• Equal access to health care services including family planning.</li> <li>• Appropriate services in connection with pregnancy and childbirth.</li> <li>• Adequate nutrition during pregnancy and lactation.</li> </ul>	<p>“Health (physical, mental, and psychological) is a state of overall well-being, which is linked to the condition of a person’s environment. Discrimination and the denial or violation of rights in indigenous communities does not provide an enabling environment for indigenous women’s health. Indigenous women’s traditional knowledge on medicinal plants is eroding due to displacement, environmental degradation, and bio-piracy. This deprives indigenous women and their communities of their medicinal resources.</p> <p>Among indigenous societies, the community is a vital element in the healing process. For indigenous women who are victims of violence, for example, family and community support are essential in their recovery and reintegration process.”</p>
<b>Article 13</b>	<b>Economic and social benefits</b> <ul style="list-style-type: none"> <li>• The right to family benefits.</li> <li>• The right to bank loans, mortgages and other forms of financial credit.</li> <li>• The right to participate in recreational activities, sports and all aspects of cultural life.</li> </ul>	<p>“The full development of indigenous women in terms of economic/social/cultural life and security is dependent on the recognition of their basic rights to their territories, resources, and self-determination. Part of social security is the family. The disintegration of the family due to displacement and/or conflict creates new and additional challenges for indigenous women as they attempt to negotiate new environments without support from the family.”</p>
<b>Article 14</b>	<b>Rural women</b> <ul style="list-style-type: none"> <li>• The right to participate in development planning.</li> <li>• Right to adequate health care facilities, direct social benefits, training and education, and to organize self-help groups and co-operatives to obtain equal access to economic opportunities.</li> <li>• Access to agricultural credit and loans, marketing facilities, appropriate</li> </ul>	<p>“Indigenous women are equally discriminated against because of their ethnic identities whether in rural or urban settings:</p> <ul style="list-style-type: none"> <li>• Individual ownership rights may undermine indigenous systems of livelihood and identity and alienate collective domains, facilitating faster loss of indigenous territories.</li> <li>• Land for indigenous women refers not only to the physical soil, but to the resources below and above it, such as water. Thus, the</li> </ul>

	<p>technology and equal treatment in land and agrarian reform.</p> <ul style="list-style-type: none"> <li>• To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport, and communications.</li> </ul>	<p>compartmentalized notion of land in agrarian reform and land settlement schemes does not capture the kind of security that ancestral lands and territories provide to women.</p> <ul style="list-style-type: none"> <li>• Adequate living conditions and basic security for indigenous women derive from their lands and communities.”</li> </ul>
<b>Article 15</b>	<p><b>Equality before the law</b></p> <ul style="list-style-type: none"> <li>• Equality before the law and courts.</li> <li>• Equal rights to conclude contracts and administer property.</li> <li>• States must nullify contracts and other private instruments that curb women’s legal rights</li> <li>• Freedom of movement and right to choose residence and domicile.</li> </ul>	<p>“Equality before the law does not fully address the legal quandary facing indigenous women. As long as their peoples are not recognized, discrimination against indigenous women will prevail.”</p>
<b>Article 16</b>	<p><b>Marriage and family relations</b></p> <ul style="list-style-type: none"> <li>• Right to freely choose a spouse and enter into marriage with full consent.</li> <li>• Equal rights and responsibilities during marriage and its dissolution.</li> <li>• Right to determine numbers and spacing of children.</li> <li>• Access to information education and means to family planning.</li> <li>• Equal rights and responsibilities regarding guardianship and adoption of children.</li> <li>• Equal rights in ownership, management, and disposal of property.</li> <li>• Nullification of child marriages.</li> <li>• Minimum age for marriage.</li> </ul>	<p>“There should be recognition of indigenous institutions and rites on marriage and family, respecting cultural diversity in ritual within the context of human rights guarantees.”</p>

## **B. CEDAW Committee’s Recommendations and Observations Relevant to Indigenous Women**

### **i. General Recommendations**

The Committee on the Elimination of Discrimination against Women monitors the implementation of CEDAW.<sup>157</sup> As part of its mandate, the Committee makes General

<sup>157</sup> Office of the United Nations High Commissioner for Human Rights [OHCHR], *Introduction to the CEDAW*, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>

Recommendations on any issue affecting women to which it believes the States parties should devote more attention.<sup>158</sup> General Recommendations are issued by treaty bodies to provide a better understanding and interpretation of human rights based on evolving standards and context and with emphasis on current human rights issues.<sup>159</sup> The CEDAW Committee's General Recommendation 33 on women's access to justice and General Recommendation 34 on rural women are of particular significance to protect indigenous women's rights from an intersectional perspective.

As of March 2018, the CEDAW Committee has issued 37 General Recommendations. Eight of these—General Recommendation 24 on women and health, General Recommendation 27 on older women, General Recommendation 30 on women in conflict prevention, conflict, and post-conflict situations, General Recommendation 33 on women's access to justice, General Recommendation 34 on rural women, General Recommendation 35 on gender-based violence against women, General Recommendation 36 on the right of girls and women to education, and General Recommendation 37 on gender-related dimensions of disaster risk reduction in the context of climate change—specifically mention indigenous women. The first time that the CEDAW Committee made explicit reference to indigenous women was until 1999—twenty years after the adoption of the Convention—on General Recommendation 24 on women and health that reads:

“special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.”<sup>160</sup>

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<sup>158</sup> OHCHR, *General Recommendations*, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Comments.aspx>

<sup>159</sup> Tugendhat and Dictaan-Bang-oa, *Realizing Indigenous Women's Rights*, 37.

<sup>160</sup> CEDAW Committee, *General recommendation No. 24: Article 12 of the Convention (women and health)*, para. 6, Document A/54/38/Rev.1, chap. I (1999), accessed May 8, 2018, <http://www.refworld.org/docid/453882a73.html>

CEDAW Committee's General Recommendation 27 on older women recognizes that "older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination."<sup>161</sup> General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations urges States parties to "provide protection against the displacement of indigenous, rural and minority women with special dependency on land."<sup>162</sup>

In 2004, despite the lack of direct reference to indigenous women, CEDAW Committee's General Recommendation 25 on temporary special measures incorporated the notion of "multiple forms of discrimination" against women "based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors."<sup>163</sup> As stated before, in 2010, in General Recommendation 28 on the core obligations of State parties, the CEDAW Committee formally adopted the term intersectionality to reconceptualize the scope of States parties' obligations set forth in article 2 of CEDAW.<sup>164</sup>

CEDAW Committee's General Recommendation 33 on women's access to justice, adopted in 2015, is highly relevant for indigenous women since it recognizes the "existence of plural justice systems," which "refers to the coexistence within a State party of State laws, regulations, procedures and decisions on the one hand, and religious, customary, indigenous or community

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<sup>161</sup> CEDAW Committee, *General recommendation No. 27 on older women and protection of their human rights*, para. 13, CEDAW/C/GC/27 (2010), accessed May 8, 2018, <http://www.refworld.org/docid/4ed3528b2.html>

<sup>162</sup> CEDAW Committee, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, para.57(b), CEDAW/C/GC/30 (2013), accessed May 8, 2018, <http://www.refworld.org/docid/5268d2064.html>

<sup>163</sup> CEDAW Committee, *General recommendation No. 25, on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, para. 12, (2004), accessed May 8, 2018, <http://www.refworld.org/docid/453882a7e0.html>

<sup>164</sup> CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 18, CEDAW/C/GC/28 (2010), accessed May 8, 2018, <http://www.refworld.org/docid/4d467ea72.html>

laws and practices on the other.”<sup>165</sup> General Recommendation 33 also elucidates States parties’ obligations under articles 2, 5(a) and 15 of CEDAW “to ensure that women’s rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.”<sup>166</sup> This means that Mexico has an international obligation to protect indigenous women from any discrimination or human rights violation emanating from communitarian laws and practices. Further, the CEDAW Committee recommends State parties to take the following steps to protect indigenous women’s rights in plural justice systems:

- (a) Implement capacity-building and training programs on the Convention and women’s rights for justice system personnel;
- (b) Enact legislation to regulate the relationships between the mechanisms within plural justice systems;
- (c) Provide safeguards against violations of women’s human rights by enabling review by State courts or administrative bodies of the activities of plural justice systems;
- (d) Ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard;
- (e) Ensure the availability of legal aid services for women to enable them to claim their rights within the various plural justice systems;
- (f) Ensure the equal participation of women at all levels in the bodies established to monitor, evaluate, and report on the operations of plural justice systems;
- (g) Foster constructive dialogue and formalize links between plural justice systems.<sup>167</sup>

Other CEDAW Committee’s General Recommendations that are highly significant to indigenous women are General Recommendations 12, 19, and 35 on violence against women. The latter, which was published in 2017, states that any existing norms of religious, customary, indigenous and community justice are to be harmonized with CEDAW standards. The Committee recommends to “[r]epeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate,

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<sup>165</sup> CEDAW Committee, *General recommendation No. 33 on women’s access to justice*, para. 5, CEDAW/C/GC/33 (2015), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

<sup>166</sup> CEDAW Committee, *General recommendation No. 33*, at para. 61.

<sup>167</sup> CEDAW Committee, *General recommendation No. 33*, at para 61-64.



justify or tolerate any form of gender-based violence.”<sup>168</sup> In particular, according to the Committee, States should repeal provisions that allow or condone child or forced marriage and other harmful practices as well as provisions that criminalize abortion, prostitution, and adultery.<sup>169</sup> Indigenous women have raised specific concerns regarding CEDAW Committee’s recommendations on violence against women:

“Indigenous women use the terminology ‘violence in the name of tradition’ instead of ‘harmful traditional practices’ to emphasize the equal need to respect as well as be critical of culture, which is a product of historical experiences in peoples’ search for meaning and as part of the context where violence against women (may) occur. Abuse or violence cannot be justified simply by culture or tradition. Other areas not covered under CEDAW, but that are part of violence experiences by indigenous women, are environmental and spiritual violence from development aggression.”<sup>170</sup>

CEDAW Committee’s General Recommendation 34 on the rights of rural women provides an intersectional approach to several rights contained in the Convention, including the rights to participate and benefit from rural development, healthcare services, economic and social life, education, employment, political and public life, land and natural resources, and adequate living conditions. According to this General Recommendation:

“States parties should ensure that disadvantaged and marginalized groups of rural women, including those belonging to indigenous, Afro-descendent, ethnic and religious minorities, heads of household, peasants, pastoralists, fisher folk, landless women, migrants and conflict-affected rural women, are protected from *intersecting forms of discrimination* and have access to education, employment,

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<sup>168</sup> CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, para. 29 (c), CEDAW/C/GC/35 (2017), available [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>169</sup> CEDAW Committee, *General recommendation No. 35*, at para. 29(c)(i).

<sup>170</sup> Tugendhat and Dictaan-Bang-oa, *Realizing Indigenous Women’s Rights*, 37.

water and sanitation and health care, among others.”<sup>171</sup>

Moreover, General Recommendation 34 urges State parties to address the root causes of traffic in women and ensure that anti-trafficking legislation addresses the social and economic challenges faced by rural women and girls, especially in rural areas and indigenous communities.<sup>172</sup> State parties must “ensure that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned or occupied.”<sup>173</sup> States parties should “strengthen customary and statutory institutions and mechanisms for defending or protecting women’s rights to land, water and other natural resources, including community paralegal services.”<sup>174</sup>

In addition, States are urged to improve living conditions of indigenous women, “who reside in peripheral regions, which tend to be poorer, more isolated and less connected to social services. They should [...] engag[e] local women in the design and implementation of rural development plans.”<sup>175</sup> In addition, in General Recommendation 34, the CEDAW Committee took the unprecedented step of encouraging States parties to translate General Recommendation 34 into national and local languages, including indigenous and minority languages, and to disseminate it widely across all sectors.<sup>176</sup>

In General Recommendation 36 on the right of girls and women to education, published in 2017, the CEDAW Committee recognizes that the majority of girls not in primary school belong

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<sup>171</sup> CEDAW Committee, *General recommendation 34 on the rights of rural women*, para. 15, CEDAW/C/GC/34 (2016), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_7933\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf)

<sup>172</sup> CEDAW Committee, *General recommendation 34*, at para. 27.

<sup>173</sup> CEDAW Committee, *General recommendation 34*, at para. 59.

<sup>174</sup> CEDAW Committee, *General recommendation 34*, at para. 59(c).

<sup>175</sup> CEDAW Committee, *General recommendation 34*, at para. 93.

<sup>176</sup> CEDAW Committee, *General recommendation 34*, at para. 97

to ethnic minority and indigenous groups. The factors that impede their access to education include poverty, discrimination, and instruction delivered in only one (usually the national) language.<sup>177</sup> The Committee recommends States to take all appropriate measures to ensure the right of all disadvantaged groups to education by addressing stereotyping and the low socioeconomic status and living conditions of indigenous girls and women.<sup>178</sup>

In its latest and 37th General Recommendation on gender-related dimensions of disaster risk reduction in the context of climate change, the CEDAW Committee underscores the need to ensure the effective participation of women and indigenous peoples in all initiatives related to climate change.<sup>179</sup> It also mentions States' responsibility under the Paris Agreement to guide climate change adaptation "by the best available science and, as appropriate, by traditional, indigenous and local knowledge systems."<sup>180</sup> The Committee recommends State parties to take positive measures to ensure that women from indigenous groups are provided with opportunities to engage in decision-making in disaster risk reduction and climate change activities.<sup>181</sup> Finally, although the following General Recommendations do not explicitly mention indigenous women, they are also relevant to an intersectional interpretation and application of CEDAW to advance indigenous women's rights: General Recommendation 16 on unpaid women workers in rural and urban family enterprises, General Recommendation 21 on equality in marriage and family

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<sup>177</sup> CEDAW Committee, *General recommendation 36 on the right of girls and women to education*, para. 41, CEDAW/C/GC/36 (2017), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_36\\_8422\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_36_8422_E.pdf)

<sup>178</sup> CEDAW Committee, *General recommendation 36*, at para. 56 (a)(b).

<sup>179</sup> CEDAW Committee, *General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change*, para. 17, CEDAW/C/GC/37 (2018), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_37\\_8642\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf)

<sup>180</sup> CEDAW Committee, *General Recommendation No. 37*, at para 34.

<sup>181</sup> CEDAW Committee, *General Recommendation No. 37*, at para 36(c).

relations, General Recommendation 23 on political and public life, and General Recommendation 29 on economic consequences of marriage, family relations and their dissolution.<sup>182</sup>

CEDAW Committee's General Recommendations are useful guidelines to interpret and apply CEDAW from an intersectional perspective to protect and defend indigenous women's rights in Mexico. General Recommendations can also be used to minimize conflicts between statutory and customary laws in relation to women's rights. In particular, General Recommendation 33 on women's access to justice and General Recommendation 34 on the rights of rural women provide useful guidelines to harmonize customary laws with human rights provisions.

CEDAW can provide a comprehensive legal framework to protect and advance indigenous women rights if interpreted in the light of CEDAW Committee's General Recommendations, ILO Convention 169, and the UNDRIP. A General Recommendation on indigenous women, however, is still needed to provide States with specific and unequivocal guidelines on how interpret and apply CEDAW in a relevant manner to indigenous women. Fortunately, the Indigenous Women's Alliance for CEDAW—composed of several indigenous women's organizations based in Mexico, Honduras, Costa Rica, Panama, Colombia, Nepal, Canada, and Guatemala—is already advocating for a new General Recommendation on indigenous women.<sup>183</sup> Let's hope for their success.

## **ii. Concluding Observations**

Article 18 of CEDAW stipulates the obligation of States Parties to submit regular reports to the CEDAW Committee on the legislative, judicial, administrative, or other measures adopted

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<sup>182</sup> Tugendhat and Dictaan-Bang-oa, *Realizing Indigenous Women's Rights*, 37.

<sup>183</sup> Women's Human Rights Education Institute, Initiative for a CEDAW General Recommendation on Indigenous Women, June 16, 2015, <http://learnwhr.org/initiative-for-a-cedaw-general-recommendation-on-indigenous-women/>

to give effect to the provisions of the Convention. During its sessions, the CEDAW Committee considers each State party report and communicates its concerns and recommendations to the State in the form of Concluding Observations. Since 1982, Mexico has submitted seven reports to the CEDAW Committee and received six Concluding Observations in return.<sup>184</sup> In four of these Concluding Observations—published in 1998, 2002, 2006, and 2012—the Committee specifically addressed indigenous women’s rights in Mexico.

In 1998, after the Zapatista uprising of 1994 in Chiapas, the CEDAW Committee expressed its concern regarding the discrimination faced by indigenous women in Mexico in relation to the rights to health, education, employment, adequate living conditions, and a life free from violence. It also expressed concern regarding “the situation of indigenous women and children, particularly in the state of Chiapas since, in conflict zones where the police or armed forces are operating, women are often the innocent victims of violence.”<sup>185</sup>

In 2002, in its Concluding Observations to Mexico, the CEDAW Committee recognized the effort to build a new relationship between Mexico’s indigenous population, the State, and society, including the design of the National Program for the Development of Indigenous Peoples and a constitutional amendment in favor of indigenous peoples’ rights.<sup>186</sup> Nonetheless, the Committee expressed its concern regarding poverty reduction strategies in indigenous areas and urged Mexico to give priority to women, with special attention to indigenous women, in its poverty strategy.<sup>187</sup>

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<sup>184</sup> Mexico submitted in December 2016 its latest report to the CEDAW Committee. The Committee still has to present its Concluding Observations.

<sup>185</sup> Report of the Committee on the Elimination of Discrimination against Women, para. 372, A/53/38/REV.1(SUPP) (May 14, 1998), accessed May 8, 2018, <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf>

<sup>186</sup> As explained above, in August 2001 the Mexican government reformed article 2 of the Mexican Constitution recognizing indigenous peoples’ rights to self-determination, autonomy, and self-governance.

<sup>187</sup> Report of the Committee on the Elimination of Discrimination against Women, para. 417-419, A/57/38(SUPP)

In 2006, the CEDAW Committee indicated its concern about the level of maternal mortality rates of indigenous women as a consequence of the insufficient access to health services, including sexual and reproductive health care. The Committee noted that abortion remained one of the leading causes of maternal deaths and that women did not have access to safe abortion services. While welcoming the establishment of the national Commission for the Development of Indigenous Peoples, the Committee was concerned about the higher levels of poverty, illiteracy, and multiple forms of discrimination experienced by indigenous and rural women. It recommended the use of temporary special measures to address the disparities that indigenous and rural women face in relation to access to basic social services and participation in decision-making processes. The Committee requested Mexico, for the first time, to include in its next periodic report data disaggregated by urban and rural areas, by states, and by indigenous population.<sup>188</sup>

In 2012, after receiving three shadow reports regarding violations against indigenous women in Mexico for the first time,<sup>189</sup> the CEDAW Committee acknowledged Mexico's initiatives to translate the Convention into ten indigenous languages and establish indigenous women's centers for the prevention and treatment of violence and the promotion of sexual and reproductive health. It expressed its concern, however, about the following aspects: 1) the high levels of poverty,

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(May 2, 2002), accessed May 8, 2018,

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/57/38\(SUPP\)&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/57/38(SUPP)&Lang=En)

<sup>188</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico, para. 34, 35, and 37, CEDAW/C/MEX/CO/6 (August 17, 2006), accessed May 8, 2018,

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMEX%2FCO%2F6&Lang=es](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMEX%2FCO%2F6&Lang=es)

<sup>189</sup> See Shadow Reports to the CEDAW Committee (2012): *Discrimination and Lack of Access to Justice for the Women in Chiapas, Mexico*, accessed May 8, 2018,

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_52\\_9632\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_52_9632_E.pdf); *Discrimination, Poverty and Violence Against Women in Mexico*, accessed May 8, 2018,

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_52\\_9634\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_52_9634_E.pdf); *Contribución escrita de mujeres rurales, campesinas e indígenas de los estados de Guerrero y Morelos, en México, preparada con el apoyo de FIAN Internacional*, accessed May 8, 2018,

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_52\\_9630\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_52_9630_S.pdf).

illiteracy, and multiple forms of discrimination against indigenous rural women, particularly in Chiapas, Guerrero, and Oaxaca; 2) harmful cultural practices within the indigenous legal systems that are based on gender-stereotyped roles for men and women; 2) the lack of indigenous rural women's access to land, property, and justice; 4) and Mexico's public security policy against organized crime that had a negative impact on indigenous rural women, who had been subjected to higher levels of violence, including *feminicidio* by security forces. Among other recommendations, the CEDAW Committee urged Mexico to eliminate the obstacles preventing indigenous women from participating in political life, to adopt temporary measures to improve indigenous women's access to land and property, to implement relevant legislation to prevent violence against indigenous women, and to ensure that law enforcement officials respect the human rights of indigenous women.<sup>190</sup>

The CEDAW Committee's Concluding Observations to Mexico show that the integration of indigenous women's rights into the Convention's monitoring mechanism has been gradual. In Mexico's initial reports and their respective Concluding Observations, indigenous women's rights were an absent or, at best, a marginal issue of concern. In contrast, in Mexico's latest reports and their respective Concluding Observations, indigenous women's rights have become a prevalent issue of concern. In its 2002 country report to the CEDAW Committee, for example, Mexico mentioned indigenous women a total of ten times, in stark contrast to its 2016 report which has seventy-two mentions. Similarly, in its 2002 Concluding Observations the CEDAW Committee mentioned indigenous women a total of nine times compared to twenty-one mentions in its 2012 Concluding Observations. The CEDAW Committee will publish its next round of Concluding

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<sup>190</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women, para. 34-35, CEDAW/C/MEX/CO/7-8 (August 7, 2012), accessed May 8, 2018, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MEX/CO/7-8&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MEX/CO/7-8&Lang=En)

Observations to Mexico in July 2018.<sup>191</sup> Hopefully this time indigenous women's issues will not only be included, but also comprehensively addressed.

The Committee's Concluding Observations to Mexico are relevant to our analysis for their specificity; however, it is important to also pay attention to CEDAW Committee's Concluding Observations to other countries with large indigenous populations. In 2010, for instance, the Committee congratulated Australia for the creation of forums to allow indigenous people's voices to be heard, including an independent Indigenous Steering Committee and the National Congress of Australia's First Peoples—with gender-balanced representation.<sup>192</sup> In 2015, the Committee recommended that Bolivia implement consultation processes to seek the free, prior, and informed consent of indigenous women in decision-making processes for the exploitation of natural resources in their territories.<sup>193</sup> The Committee also suggested that Bolivia organize awareness-raising campaigns in indigenous languages regarding the minimum age to marry, the principle of equality between men and women in marriage, and inheritance rights.<sup>194</sup> In 2016, the Committee suggested that Canada train more indigenous women to provide legal aid to other women from their communities in domestic violence cases and on property rights. Likewise, the Committee recommended that Canada provide capacity building programs and cultural training regarding indigenous women for judges, prosecutors, and police officers.<sup>195</sup> These are just some examples

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<sup>191</sup> See: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En)

<sup>192</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia, para 13, CEDAW/C/AUL/CO/7 (July 30, 2010), accessed May 8, 2018, <http://undocs.org/CEDAW/C/AUL/CO/7>

<sup>193</sup> Concluding Observations on the combined fifth and sixth periodic reports of the Plurinational State of Bolivia, para 34(a), CEDAW/C/BOL/CO/5-6 (July 28, 2015) accessed May 8, 2018, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BOL/CO/5-6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BOL/CO/5-6&Lang=En)

<sup>194</sup> Concluding Observations on the combined fifth and sixth periodic reports of the Plurinational State of Bolivia, para 38.

<sup>195</sup> Concluding Observations on the combined eighth and ninth periodic reports of Canada, para 9, CEDAW/C/CAN/CO/8-9 (November 25, 2016), accessed May 8, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>



of how valuable and instructive the experiences of other countries in the advancement of indigenous women's rights can be.

This section has shown that CEDAW Committee's General Recommendations and Concluding Observations are essential guidelines to interpret and apply CEDAW from an intersectional perspective to effectively protect indigenous women's rights. Further, this section illustrated the importance of paying attention and learning from the achievements and shortcomings of other countries in their attempts to advance indigenous women's rights. Finally, this section revealed the need to engage with the CEDAW Committee's monitoring mechanisms to make sure that indigenous women's rights become a priority in the implementation of the Convention. We have to ensure that indigenous women's experiences remain visible, their voices heard, and their rights protected.

## CHAPTER IV.

### THE SIGNIFICANCE OF CEDAW FOR INDIGENOUS WOMEN IN MEXICO

Among all human rights treaties, CEDAW is particularly useful for indigenous women for four reasons. First, it is an instrument that specifically addresses discrimination against women. Second, the CEDAW Committee has recognized the existence of intersecting forms of discrimination and made recommendations to State parties on how to comply with CEDAW accordingly. Third, CEDAW is a living instrument interpreted and reinterpreted considering the prevailing circumstances and conditions at a given period.<sup>196</sup> Fourth, as shown in previous chapters, CEDAW can be interpreted in the light of ILO Convention 169, the UNDRIP, and CEDAW Committee's recommendations and observations to provide a more comprehensive and relevant framework of protection for indigenous women.

This section will examine different ways in which indigenous women can use CEDAW to advance and protect their rights at the national, international, and local levels. Since the Human Rights Amendments of 2011, which will be explained in this chapter, Mexico opened an unprecedented window of opportunity to protect human rights in the country. These amendments, however, have been overlooked and underexploited. It is vital, therefore, for indigenous women to learn how to use all legal avenues available in Mexico to assert their human rights. At the international level, CEDAW Committee's monitoring mechanisms have also been underused in Mexico. It is essential that indigenous women learn how to engage with treaty mechanisms to advance their rights and priorities in the international arena. At the local level, especially in indigenous communities, human rights treaties have been an absent, at best marginal, topic. It is

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<sup>196</sup> Ellen-Rose Kambel, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*, 4, (Forest Peoples Programme 2004), accessed May 8, 2018, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/cedawguidejan04eng.pdf>

important that indigenous women learn how to use international law to inform and transform customary laws and practices that discriminate against them.

#### **A. National Level: Holding the Mexican State Accountable in National Courts**

On June 10, 2011, the Mexican Constitution changed profoundly due to modifications of eleven articles, which came to be known as the 2011 Human Rights Amendments. The amendments transformed the way human rights are protected in Mexican society.<sup>197</sup> Article 1 of the Constitution now states that:

“In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution *and the international treaties ratified by Mexico*, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.”<sup>198</sup>

The reform also amended the second paragraph of article 1 which now states that “the provisions relating to human rights shall be interpreted according to this Constitution and the international treaties on the subject, working in favor of the broader protection of people at all times.” In other words, the reform established the principle *pro homine*, which means applying the most favorable law for the individual and interpreting that law in the most advantageous manner to the human being. The third paragraph of article 1 established the obligation of all authorities “to promote, respect, protect and guarantee human rights, in accordance with the principles of

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<sup>197</sup> Victor Manuel Colli Ek, *Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges*, Human Rights Brief 20, no.1, 7-14 (2012), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1850&context=hrbrief>

<sup>198</sup> Constitution of Mexico, *as amended*, Diario Oficial de la Federación [D.O.], art.1, 30 de noviembre de 2012 (Mex.).

universality, interdependence, indivisibility, and progressiveness. Thus, the State must prevent, investigate, penalize, and rectify violations to human rights, according to the law.”<sup>199</sup>

Article 1 of the Mexican Constitution accepts the application of international human rights standards to Mexican laws and allows lawyers and judges to use international human rights treaties as a tool for asserting human rights violations.<sup>200</sup> According to the Mexican Supreme Court, Mexico has ratified 210 international treaties that contain human rights provisions.<sup>201</sup> This means that indigenous women can use any of these human rights provisions to protect and advance their rights in the country, including the Indigenous and Tribal Peoples Convention of 1989 and the Convention on the Elimination of all Forms of Discrimination Against Women.

Prior to the 2011 Human Rights Amendments, the Mexican Supreme Court considered human rights contained in international treaties as hierarchically inferior to those contained in the Constitution. The constitutional amendment explicitly placed international human rights treaties ratified by Mexico at the same hierarchical level as the Constitution.<sup>202</sup> The imposition of international standards on national mechanisms raised several questions about the relationship between international jurisdictions—represented primarily by the Inter-American Court of Human Rights—and the national judiciary. The specific concern regarded the “diffuse control<sup>203</sup> of conventionality<sup>204</sup> ex officio<sup>205</sup>.” In other words, it raised the question as to whether Mexican

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<sup>199</sup> Constitution of Mexico, *as amended*, Diario Oficial de la Federación [D.O.], art.1, 30 de noviembre de 2012 (Mex.).

<sup>200</sup> Colli Ek, *Improving Human Rights in Mexico*, 9.

<sup>201</sup> See Suprema Corte de Justicia de la Nación [SCJN], *Tratados internacionales de los que el Estado Mexicano es parte en los que se reconocen derechos humanos* (2012), <http://www2.scjn.gob.mx/red/constitucion/TI.html>

<sup>202</sup> Colli Ek, *Improving Human Rights in Mexico*, 9.

<sup>203</sup> “Diffuse control” refers to the fact that any federal or state judge may analyze laws according to the Constitution (control of constitutionality) or treaties (control of conventionality).

<sup>204</sup> Conventionality refers to whether an act or law in Mexico is in accordance with a convention or treaty.

<sup>205</sup> A judge’s faculty to analyze human rights violations regardless if the right is established in the Mexican Constitution or any international treaty and without a request from any party in the procedure to do so.

courts could apply directly the American Convention on Human Rights and whether they should take into consideration the interpretations of the Inter-American Court of Human Rights.<sup>206</sup>

In July 2011, the Supreme Court resolved this question in *Expediente Varios 912/2010*<sup>207</sup> by uniting article 1 with article 133<sup>208</sup> of the Mexican Constitution as well as the arguments of the Inter-American Court of Human Rights in paragraph 339 of the *Radilla-Pacheco v. Mexico* sentence<sup>209</sup>, thereby adopting both constitutionality and conventionality control for all judges regardless of jurisdiction. The Supreme Court's new interpretation stated, first, that judges in Mexico must apply control of constitutionality and conventionality, which means that they are obliged to defend human rights enshrined not only in the Mexican Constitution but also in international treaties. Second, diffuse control applies to all Mexican judges, which means that all judges, at all levels, can decide not to apply a state or federal law that conflicts with human rights provisions enshrined in the Constitution or international treaties ratified by Mexico.<sup>210</sup> Third, judges may analyze and decide a human rights violation in any case under their study and without

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<sup>206</sup> Colli Ek, *Improving Human Rights in Mexico*, 11.

<sup>207</sup> See D.O., 4 de octubre de 2011, at [http://dof.gob.mx/nota\\_detalle.php?codigo=5212527&fecha=04/10/2011](http://dof.gob.mx/nota_detalle.php?codigo=5212527&fecha=04/10/2011)

<sup>208</sup> Constitution, *as amended*, Diario Oficial de la Federación [D.O.], art.133, 30 de noviembre de 2012. Article 133 reads: "This Constitution, the laws derived from and enacted by the Congress of the Union, and all the treaties made and executed by the President of the Republic, with the approval of the Senate, shall be the supreme law of the country. The judges of each state shall observe the Constitution, the laws derived from it and the treaties, despite any contradictory provision that may appear in the constitutions or laws of the states."

<sup>209</sup> Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 777/01, at 339 (Nov. 23, 2009) (condemning Mexico for violations of the rights to life, due process, and freedom of expression, as well as the right to be free from enforced disappearance). Paragraph 339 reads: "With regard to judicial practices, this Tribunal has established, in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system. But once a State has ratified an international treaty such as the American Convention, its judges, as part of the State's apparatus, are also submitted to it, which compels them to make sure that the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation. In other words, the Judiciary shall exercise a "control of conventionality" ex officio between domestic regulations and the American Convention, evidently within the framework of its respective competences and the corresponding procedural regulations. Within this task, the Judiciary shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it."

<sup>210</sup> It is important to note that judges have the faculty of deciding not to apply a certain law that conflicts with human rights provisions enshrined in the Constitution or international treaties ratified by Mexico. They do not have the faculty of declaring the law unconstitutional, which is reserved to the Mexican Supreme Court of Justice.

request from any party in the procedure to do so (i.e. ex officio).<sup>211</sup> Further, the Supreme Court ruled that the “diffuse control of conventionality ex officio” must be based on the following parameters of analysis: (1) all human rights contained in the Constitution as well as the jurisprudence issued by the federal judiciary; (2) all human rights contained in international treaties ratified by Mexico; (3) binding sentences of the Inter-American Court of Human Rights for cases in which Mexico acted as the defendant, and guiding jurisprudence of the Inter-American Court of Human Rights for cases in which Mexico was not involved.<sup>212</sup>

The 2011 Human Rights Amendments and the adoption of the “diffuse control of conventionality ex officio” by the Supreme Court opened an unprecedented window of opportunity to protect human rights in Mexico. All judges, when issuing a judgement, must consider human rights norms contained in the Mexican Constitution and international treaties ratified by Mexico. This means that, today, indigenous women and their advocates can use CEDAW and ILO Convention 169 to hold Mexico accountable for human rights violations, before *any* court in the country.

Despite this unprecedented window of opportunity, the implementation of the human rights reform is an ongoing process with several limitations. Sandra Salcedo González, a Mexican human rights lawyer and law professor at *Universidad Panamericana* in Mexico City, explains that judges in Mexico are still reluctant to use international law in their judgements due to the misguided belief that it infringes on national sovereignty. She also claims that some judges are informally coerced not to apply human rights norms by higher and more powerful actors who threaten them with ending their judicial careers. Thus, many judges prefer to rule as they have been doing for the past

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<sup>211</sup> Colli Ek, *Improving Human Rights in Mexico*, 11-12.

<sup>212</sup> See D.O., para. 31, 4 de octubre de 2011, at [http://dof.gob.mx/nota\\_detalle.php?codigo=5212527&fecha=04/10/2011](http://dof.gob.mx/nota_detalle.php?codigo=5212527&fecha=04/10/2011)

decades instead of using the *pro homine* principle and applying the most favorable law and interpretation to the human being. Salcedo explains that it is imperative that the Mexican government increase its efforts and allocate more resources to train all judges on how to implement the 2011 Human Rights Amendments. Likewise, she says that a shift in the judicial branch's mindset is needed to ensure that the State is held accountable for human rights violations.<sup>213</sup> Martha Figueroa observes, for instance, that even though she cites international law in all the briefs she files in San Cristóbal de las Casas, Chiapas, the court's responses and judgements make no reference to international law.<sup>214</sup>

Notwithstanding these limitations, human rights lawyers and advocates must learn how to use international treaties to advance human rights in the country. Martha Figueroa's approach is illustrative on how treaties can be used to advance indigenous women's rights specifically. She explains that in every case involving an indigenous girl or women, she cites CEDAW, ILO Convention 169, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women—known as the Convention of Belém do Pará, where it was adopted in 1994. Moreover, she uses gender inclusive language in all her briefs and avoids the use of masculine generics. For instance, Figueroa uses the word *humanas* (female humans) as well as *humanos* (male humans) because, according to her, “what is not named does not exist.”<sup>215</sup>

It is imperative that lawyers in Mexico, like Figueroa, cite in their briefs human rights provisions enshrined in CEDAW, ILO Convention 169, Convention of Belém do Pará, and other international treaties to assert indigenous women's rights. It is imperative that lawyers adopt an intersectional approach to human rights law by including several treaties in their briefs along with

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<sup>213</sup> Interview with Sandra Salcedo González, Human Rights Lawyer and Law Professor in Universidad Panamericana in Mexico City, interview by Paulina Lucio Maymon, in person, January 10, 2018.

<sup>214</sup> Interview with Martha Figueroa Mier.

<sup>215</sup> Interview with Martha Figueroa Mier.

the corresponding treaty body's general recommendations and concluding observations, as outlined above for CEDAW. It is imperative that lawyers cite international jurisprudence, especially from the Inter-American Court and Commission of Human Rights. Moreover, it is imperative that they thoroughly interview their clients to understand the multiple and diverse forms of discrimination that indigenous women suffer in order to create an effective and pertinent legal strategy. If more lawyers use international treaties in their briefs and litigation strategies, judges will have no choice but to consider international law too.

It is also important for lawyers to be aware that in cases of human rights violations against indigenous women, there may be several forms of abuse and discrimination which amount not to one but to several breaches of international law. As shown above, for instance, the violation of indigenous women's reproductive rights usually entails the violation of their rights to a life free of violence, to freedom, to privacy, to be free from torture, and sometimes even to life. Litigating a case of an indigenous woman whose reproductive rights have been violated, therefore, would require drawing from human rights provisions stipulated in CEDAW, ICESCR, CAT, ICCPR, ILO Convention 169, and the Convention of Belém do Pará, at the very least.

In short, indigenous women and their advocates can and must use CEDAW and any other human rights treaty ratified by Mexico to hold the State accountable for human rights violations in domestic courts. These violations include those committed by private actors—such as parents, siblings, partners, communities, organized crime, and others—where the State has failed to prevent, investigate, penalize, and rectify such violations. I believe that if lawyers and advocates in Mexico push forward the human rights reform, by bringing international human rights provisions into their legal strategies, judges will have no other choice but to familiarize themselves



with this legal system and learn how to apply it. The next section presents a complementary approach to make Mexico accountable for human rights violations at the international level.

## **B. International Level: Engaging with the CEDAW Committee's Monitoring Mechanisms**

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Optional Protocol to CEDAW) was adopted in 1999 by the United Nations General Assembly. On March 15, 2002, Mexico ratified the Optional Protocol to CEDAW, accepting both the communications and the inquiry procedures stipulated in this treaty. The communications procedure, established in article 6 of the Optional Protocol to CEDAW, gives individuals and groups the right to submit individual complaints to the CEDAW Committee. The inquiry procedure, enshrined in article 8 of the Optional Protocol to CEDAW, enables the Committee to initiate a confidential investigation where it has received reliable information of grave or systematic violations of women's rights in countries that become States parties to the Optional Protocol.<sup>216</sup> As of March 2018, the Optional Protocol to CEDAW has 109 State parties.<sup>217</sup>

Mexican society has been underutilizing CEDAW monitoring mechanisms. To date, only one inquiry petition and one individual communication have been submitted before the CEDAW Committee denouncing women's rights violations under CEDAW in Mexico. In 2004, the CEDAW Committee concluded an inquiry procedure regarding the abduction, rape, and murder of women in Ciudad Juárez, Chihuahua, Mexico. In 2005, the Committee published a report on the inquiry, including its findings and recommendations, as well as the observations received from

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<sup>216</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, October 6, 1999, A/RES/54/4 [hereinafter Optional Protocol]

<sup>217</sup> See: <http://indicators.ohchr.org>

Mexico.<sup>218</sup> In 2014, the parents of Pilar Arguello Trujillo, a Mexican woman victim of *feminicidio* in Veracruz, Mexico, submitted an individual communication before the CEDAW Committee on behalf of her deceased daughter.<sup>219</sup> Pilar Arguello Trujillo was murdered on September 3, 2012 in the state of Veracruz. Her body showed signs of sexual violence, degrading injuries and an inability to defend herself, and had been left unconcealed in a public place, characteristics typical of *feminicidio*. Her parents claimed that the authorities that investigated the crime were negligent and failed to take the necessary actions to ascertain the truth about what happened.<sup>220</sup> After admitting and examining the communication, in 2017, the CEDAW Committee published its views and recognized that Mexico had failed to demonstrate that it made every effort to comply with its obligation under CEDAW to investigate the crime, bring the perpetrator to trial, and impose adequate penal sanctions.<sup>221</sup>

The communications and inquiry procedures under the Optional Protocol to CEDAW have also been underutilized worldwide. As of 2016, the CEDAW Committee had received sixteen communications concerning Denmark—the country with the highest number of individual complaints—eight concerning the Netherlands, and five concerning Canada and the United Kingdom. On average, the CEDAW Committee receives less than one communication per State

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<sup>218</sup> CEDAW Committee, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, 32<sup>nd</sup> session, CEDAW/C/2005/OP.8/MEXICO (January 10-28, 2005), accessed May 8, 2018, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/CEDAW\\_C\\_2005\\_OP-8\\_MEXICO\\_5739\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/CEDAW_C_2005_OP-8_MEXICO_5739_E.pdf)

<sup>219</sup> CEDAW Committee, *Views adopted by the Committee under article 7, paragraph 4, of the Optional Protocol, concerning communication No. 75/2014\*\*\**, CEDAW/C/67/D/75/2014 (August 29, 2017), accessed May 8, 2018, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F67%2FD%2F75%2F2014&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F67%2FD%2F75%2F2014&Lang=en)

<sup>220</sup> CEDAW Committee, *Views adopted by the Committee under article 7, paragraph 4, of the Optional Protocol, concerning communication No. 75/2014*, para 2.1 and 2.7.

<sup>221</sup> CEDAW Committee, *Views adopted by the Committee under article 7, paragraph 4, of the Optional Protocol*, para. 9.4 – 9.6.

party.<sup>222</sup> Similarly, to date, the CEDAW Committee has completed a total of four inquiry procedures including one in the United Kingdom, one in Canada, one in the Philippines, and one in Mexico.<sup>223</sup> It would be interesting to do further research on why the communications and inquiry procedures under CEDAW Optional Protocol have been underutilized worldwide. This, however, is beyond the scope of this paper.

The underuse of CEDAW Committee's monitoring mechanisms opens a window of opportunity for indigenous women and their advocates to engage more actively with the CEDAW Committee. As explained earlier, indigenous women have become political actors in Mexico who seek the protection of both their collective and individual rights. Indigenous women could use CEDAW as an instrument for lobbying, advocacy, and accountability to advance their rights and priorities at both the national and international levels. Indigenous women can engage with the CEDAW Committee's monitoring mechanisms by submitting three different types of documents: (1) individual communications, (2) inquiry petitions, and (3) shadow reports.

#### **i. Individual Communications**

The communications procedure is regulated by articles 1 to 7 of the Optional Protocol to CEDAW. Individual communications (also called individual complaints) may be submitted by one indigenous woman or groups of indigenous women claiming that Mexico violated any of the rights stipulated in CEDAW. Communications can also be submitted on behalf of indigenous women with their written consent.<sup>224</sup> The complaint must contain information about steps taken to exhaust domestic remedies at the national level. This means that the case must have been brought to the

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<sup>222</sup> See Statistical Survey on individual complaints, available to download at:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx> (under complaints procedure).

<sup>223</sup> See Treaty Body Database, accessed May 8, 2018,

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7)

<sup>224</sup> Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Mexican court system's last instance. Otherwise, evidence that domestic remedies were ineffective, unavailable, or unreasonably prolonged needs to be provided. Communications must be in writing and cannot be anonymous; although it is possible to request the Committee to keep the names confidential in its final decision.<sup>225</sup>

After receiving a communication and before issuing an opinion on the merits, the CEDAW Committee has the faculty to request Mexico to take interim measures to avoid irreparable damage to the complainants. The Committee will then bring the communication to the attention of the Mexican government, who will have six months to respond on both its admissibility and merits (two months if it challenges admissibility only). Mexico's response will then be transmitted to the complainants, who will be given an opportunity to comment.<sup>226</sup>

If the Committee decides that the communication is inadmissible,<sup>227</sup> the case is finished. If it decides that the communication is admissible, the Committee will move on to the merits stage and transmit its views and recommendations on the complaint. Then, Mexico will have another six months to submit a written response to the Committee including information on any action taken to comply with the Committee's recommendations. Moreover, the Committee may invite Mexico to submit further information about these measures in its subsequent periodic reports under article 18 of CEDAW.<sup>228</sup>

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<sup>225</sup> OHCHR, "Fact Sheet: How to Submit Individual Complaints under the Optional Protocol to CEDAW" (Office of the High Commissioner for Human Rights, n.d.).

<sup>226</sup> OHCHR.

<sup>227</sup> Article 4(2) of the Optional Protocol to CEDAW states that "The Committee shall declare a communication inadmissible where: (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement; (b) It is incompatible with the provisions of the Convention; (c) It is manifestly ill-founded or not sufficiently substantiated; (d) It is an abuse of the right to submit a communication; (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

<sup>228</sup> OHCHR, "Fact Sheet: How to Submit Individual Complaints under the Optional Protocol to CEDAW."

An individual communication can be submitted for a single violation of any of the rights stipulated in CEDAW. Likewise, it can be submitted by one indigenous woman or a group of indigenous women to make Mexico accountable for human rights violations under CEDAW. Furthermore, through this procedure indigenous women can bring the Committee's attention to the discrimination and human rights violations they face in Mexico. The communications procedure is a useful mechanism to inform the Committee's assessment of Mexico's implementation of CEDAW and to pressure Mexico to conform to its international obligations.

## **ii. Inquiry Petitions**

The inquiry procedure is regulated by articles 8 and 9 of the Optional Protocol to CEDAW. This procedure may be initiated if the Committee receives reliable information of grave or systematic violations of the rights contained in CEDAW. An inquiry petition must provide a factual description of the violations, indicate the rights which are alleged to have been infringed, and describe the extent to which infringement of these rights is grave or systematic. In contrast with individual complaints, which may be filed for a single violation, inquiry petitions must demonstrate grave or systematic violations of the rights under CEDAW. An inquiry petition cannot exceed 7000 words excluding annexes.<sup>229</sup>

Inquiry petitions may be submitted by or on behalf of indigenous women claiming that Mexico has gravely or systematically violated their rights under CEDAW. Upon receiving an inquiry petition, the CEDAW Committee will invite Mexico to submit observations. The Committee will decide—on the basis of Mexico's observations and other relevant information—to designate one or more of its members to conduct an inquiry and report to the Committee. With

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<sup>229</sup> OHCHR, "Inquiry Procedure," Office of the High Commissioner for Human Rights, accessed March 14, 2018, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/InquiryProcedure.aspx>.

the consent of Mexico, an inquiry may include a visit to its territory. The Committee will then examine the findings and transmit them to Mexico together with any comments and recommendations. Mexico will have six months to submit its own observations on the Committee's findings, comments, and recommendations. If requested, Mexico will have to inform the Committee of the measures taken in response to the inquiry. The inquiry procedure is confidential, and the cooperation of the State is necessary at all stages of the proceedings.<sup>230</sup>

An inquiry procedure would allow the CEDAW Committee to investigate substantial abuses of indigenous women's human rights in Mexico. An inquiry procedure is particularly valuable where indigenous women may be unable to make individual communications for practical reasons or because of fear of reprisals. Further, an inquiry procedure would allow the Committee to make recommendations regarding the root causes of violations, and to address a broad range of issues regarding indigenous women's rights.<sup>231</sup> It is also worth noting that the submission of an inquire petition does not require the exhaustion of domestic remedies. Moreover, it is possible to submit an inquiry petition even when the same matter has been or is being examined under another procedure of international investigation or settlement. For instance, the fact that the *Case of González et al. ("Cotton Field") v. Mexico*—regarding the *feminicidios* of three women in Ciudad Juárez, Chihuahua—was pending before the Inter-American Court of Human Rights in 2004, did not prevent the CEDAW Committee from completing an inquiry procedure regarding *feminicidios* in Ciudad Juárez in 2004. Finally, it is important to bear in mind that the inquiry procedure does not provide interim measures for the victims.

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<sup>230</sup> OHCHR.

<sup>231</sup> UN Women, "What Is an Optional Protocol?," accessed March 14, 2018, <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm>.

The inquiry procedure is a useful mechanism that indigenous women can use to have the CEDAW Committee investigate grave or systematic violations of their human rights. This procedure provides an alternative mechanism to inform the Committee's assessment of Mexico's implementation of CEDAW and to pressure Mexico to conform to its international obligations. The greatest advantages of inquiry procedure are that it protects specific victims from public scrutiny, and that it can be pursued at the same time as other procedures before international courts.

### **iii. Shadow Reports**

Indigenous women's organizations could also communicate with the CEDAW Committee by submitting shadow or alternative reports. These are reports written by civil society and submitted to the Committee at the same time a State party is reporting its progress in implementing CEDAW (every four years). The purpose of these reports is to provide information to the Committee that may be lacking in the official government reports.<sup>232</sup> Indigenous women in Mexico can use shadow reports to provide accurate information to the CEDAW Committee about the unique forms of discrimination they experience regarding access to justice, education, and health services. They can share their concerns about inadequacies or gaps in existing laws and policies, or in the implementation of them, and about any obstacles they face in exercising their human rights.<sup>233</sup> Shadow reports should be organized to meet the CEDAW Committee's guidelines, including a response to information presented by the State in the Common Core Document (CCD).<sup>234</sup>

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<sup>232</sup> Tugendhat and Dictaan-Bang-oa, *Realizing Indigenous Women's Rights*, 62.

<sup>233</sup> Tugendhat and Dictaan-Bang-oa, 60–62.

<sup>234</sup> The CCD is an account of the State party's geography, economy, population, political system. It also describes the laws, policies, institutions, and remedies relating to human rights and specifically to discrimination.

The CEDAW Committee invites non-governmental organizations to submit reports to the pre-sessional working groups, which meet several months prior to the session where the State's report is to be reviewed. Submitting a shadow report to the pre-sessional working group can help ensure that indigenous women's matters of concern are added to the list of issues that will be considered at the session. To participate at this stage, NGOs should submit written information, preferably the full shadow report, to the Office of the United Nations High Commissioner for Human Rights (OHCHR) at least two weeks prior to the pre-sessional working group meeting. NGOs can make an oral presentation to Committee members at the pre-sessional working group meeting.<sup>235</sup>

NGOs can also submit their shadow reports after the pre-sessional working group meeting but prior to the CEDAW Committee's session. The CEDAW Committee meets each year in at least two sessions of approximately three weeks each. From July 2 to July 20, 2018, the CEDAW Committee will meet for its 70<sup>th</sup> session, where it will review Mexico's ninth country report submitted in 2016.<sup>236</sup> The Committee will also review three shadow reports submitted in 2017 regarding: (1) women's access to justice,<sup>237</sup> (2) family violence,<sup>238</sup> and (3) women's sexual and reproductive rights in Mexico.<sup>239</sup> NGOs are also invited to make a short oral presentation during the Committee's session.

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<sup>235</sup> *Producing NGO Shadow Reports to the CEDAW Committee: A Procedural Guide* ([S.l.]: International Women's Rights Action Watch, 2008), [http://link.galegroup.com/apps/pub/3JPE/AONE?sid=kbart?&u=nysl\\_sc\\_cornl](http://link.galegroup.com/apps/pub/3JPE/AONE?sid=kbart?&u=nysl_sc_cornl).

<sup>236</sup> The CEDAW Committee's 70 Session Agenda is available here:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1171&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1171&Lang=en)

<sup>237</sup> Submitted by *Justicia para las Mujeres (EQUIS)* in 2017. Report available here:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_29281\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_29281_E.pdf)

<sup>238</sup> Submitted by the *Global Initiative to End All Corporal Punishment of Children* in 2017. Report available here:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_29041\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_29041_E.pdf)

<sup>239</sup> Submitted by *Ipas Mexico* in 2017. Report available here:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_29094\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_29094_E.pdf)



By using CEDAW reporting mechanism as a platform for lobbying and advocacy, indigenous women can make themselves visible and heard. Moreover, by communicating with the CEDAW Committee, indigenous women may pressure Mexico to conform to its international obligations and inform the Committee's assessment of Mexico's implementation of CEDAW. As shown earlier, after receiving three shadow reports about indigenous women in 2012, the CEDAW Committee included in its Concluding Observations to Mexico several specific recommendations regarding indigenous women's rights. The next and final section of this chapter examines how to use CEDAW at the local level to inform and transform customary laws and practices that discriminate against women.

### **C. Local Level: Informing and Transforming Communitarian Laws and Practices**

Indigenous peoples' collective rights and indigenous women's rights are interrelated and interdependent. Indigenous men and women claim collective rights as peoples not only to defend their culture and identity, but also to defend their lands and livelihood.<sup>240</sup> The rights to self-determination, self-governance, and autonomy are vital for indigenous peoples to freely regulate their political status, pursue their economic, social, and cultural development, and preserve their historic lands and resources. The rights to self-determination, self-governance, and autonomy cannot be achieved without involving indigenous women's social, economic, civil, and political demands. Hence, indigenous women are fighting two parallel battles: one for their collective rights as peoples and the other to transform discriminatory communitarian laws, institutions, and practices in their communities. In March 2001, while addressing the Mexican National Congress, Zapatista Commander Esther said:

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<sup>240</sup> Sieder, "Legal Pluralism and Indigenous Women's Rights in Mexico," 1130.

“In addition to being women, we are indigenous, and as such we are not recognized. We know which uses and customs are good, and which are bad. The bad ones are hitting and beating a woman, buying and selling her, marrying her against her will, not allowing her to participate in assemblies, and impeding her to leave the house. That is why we want indigenous rights and culture laws to be approved. It is very important for us, indigenous women of Mexico. We will be respected as the women and indigenous peoples we are.”<sup>241</sup>

The solution to advance women’s rights under customary laws and practices is not likely to come from the legal implementation of a human rights treaty. For instance, although the civil code of Chiapas forbids girls under eighteen to marry, underage girls are still getting married under customary laws. Instead, it is important to think of local strategies to challenge and change discriminatory laws and traditions.<sup>242</sup>

Sally Engle Merry, Professor of Anthropology at New York University, coined the term vernacularization to describe the role that local agents play in making international human rights laws applicable to local contexts to challenge gender discrimination and violence. Vernacularization is a process of translation of human rights across boundaries of class, ethnicity, race, and culture. Through case studies, Engle Merry found that vernacularization is a widespread practice that takes different forms in different organizations and contexts.<sup>243</sup> Engle Merry explains that vernacularizers—including politicians, human rights lawyers, feminist activists, academics, social workers, and other social providers—import international ideas and practices and translate them in terms that local groups will accept them. This process brings human rights as a justice ideology into a wide range of communities. Engle Merry states:

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<sup>241</sup> Shannon Speed, R. Aída Hernández Castillo, and Lynn M. Stephen, *Dissident Women: Gender and Cultural Politics in Chiapas* (University of Texas Press, 2013), 23.

<sup>242</sup> Vijaya Nagarajan & Archana Parashar, *Space and Law, Gender and Land: Using CEDAW to Regulate for Women’s Rights to Land in Vanuatu*, 24 *Law Critique* 87, (2012), 98.

<sup>243</sup> Sally Engle Merry, *Human Rights and Gender Violence : Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006), <http://newcatalog.library.cornell.edu/catalog/5718715>.

“The power of human rights to change the way people think and act is their capacity to change existing cultural practices such as the husband’s authority to discipline his wife through beating. It is not their ability to blend into preexisting cultural systems. Adopting human rights locally does not build on a preexisting similarity of cultural beliefs any more than introducing bureaucracy or traffic light does. But proponents do dress them in familiar costumes.”<sup>244</sup>

Rachel Sieder, Senior Research Professor at the Center for Research and Graduate Studies in Social Anthropology (CIESAS) in Mexico City, explains that indigenous laws are inherently dynamic: “[r]ather than conceiving of state law and indigenous community law as fixed or static entities, anthropologists have analyzed how these laws evolve and change over time in relation to each other and to international law, giving rise to new legal hybrids.”<sup>245</sup> Likewise, Emily Snyder states, “indigenous laws, like any other form of law, do not exist in isolation from social norms, and they are time, place, and culture specific. For indigenous laws to be useful and healthy, they must be repeatedly discussed, deliberated, and revised as necessary.”<sup>246</sup> Indigenous women in Mexico can utilize CEDAW, ILO Convention 169, the UNDRIP, or any other human rights treaty or declaration to inform and transform customary laws and traditions that discriminate against them in their communities.

The work of the Diocesan Coordination of Women in Chiapas (CODIMUJ) is a telling example of how human rights standards can be appropriated by local communities when presented in familiar cultural and, as in this case, religious terms. As explained in chapter one, CODIMUJ is the largest women’s organization in Chiapas and one of the largest in the country with seven hundred local groups and more than ten thousand members. CODIMUJ work is influenced by

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<sup>244</sup> Merry, 138.

<sup>245</sup> Sieder, “Legal Pluralism and Indigenous Women’s Rights in Mexico,” 1129.

<sup>246</sup> Emily Snyder, *Indigenous Feminist Legal Theory*, 26 Can. J. Women & L. 365, (2014), 396.

Feminist and Liberation Theologies.<sup>247</sup> CODIMUJ brings together thousands of indigenous and mestizo women to participate in local discussion groups, workshops, and meetings. In these encounters, women share their reflections of the word of God; analyze the political, economic, and social situation in which they live; and discuss their personal experiences. They also participate in workshops on health, literacy, and human rights. CODIMUJ's motto is: "Reading the Bible through the eyes, mind, and heart of a woman."<sup>248</sup> CODIMUJ has established partnerships with other women's organizations such as the Center for Women's Rights of Chiapas (CDMCH), where they refer women in need of legal services.<sup>249</sup>

Josefina Martínez and Cecilia Roveló, representatives of CODIMUJ in San Cristóbal de las Casas, Chiapas, explain that they teach women how to reinterpret passages of the Bible through a feminist lens. They analyze strong female characters in the Bible to motivate women to stand up against discrimination and mistreatment.<sup>250</sup> For instance, they teach women that God created men and women equally. Therefore, women's and men's dignity are equal and sacred. If a woman allows her husband to beat her, she is allowing him to infringe upon her sacred dignity. Under this interpretation of the Bible, Josefina and Cecilia explain, a woman who decides to leave her abusive husband does not become a sinner. The sinner is her husband who violated her dignity. A woman should not allow this to happen. A woman must protect her sacred human dignity.<sup>251</sup>

Cecilia and Josefina, along with other women in CODIMUJ, organize workshops to examine passages of the Bible and discuss their relevance in women's lives.<sup>252</sup> They discuss the

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<sup>247</sup> Christine Eber and Christine Kovic, *Women of Chiapas: Making History in Times of Struggle and Hope* (Routledge, 2013), 133.

<sup>248</sup> Eber and Kovic, 133.

<sup>249</sup> Interview with CODIMUJ members.

<sup>250</sup> Interview with Josefina Martínez and Cecilia Roveló, members of CODIMUJ, interview by Paulina Lucio Maymon, In person in San Cristóbal de las Casas, Chiapas, February 19, 2018. Interview with CODIMUJ members.

<sup>251</sup> Interview with CODIMUJ members.

<sup>252</sup> Interview with CODIMUJ members.

biblical passage where Jesus, after resuscitating, made his first appearance before two women: Mary Magdalene and Mary (mother of James). Jesus asked these women not to be afraid and to share the news of his resurrection with his disciples.<sup>253</sup> The following are women's reflections on this passage from a CODIMUJ workshop held in San Cristóbal de las Casas in April 1997:

"Today we must have courage like the women who went to the tomb."

"It teaches us to not be afraid, to take the message to our communities. It tells us to be without fear like Mary Magdalene and other women."

"The work of women is important. Some have strength, but those who stay in their homes do not have sufficient strength."

"The women of earlier times had strength. We can also have this strength. [...] through the women we are given the notice to take the message to our brothers and sisters."

"If we go out [of our homes], if we come to the meetings, we wake up, we learn, we gain courage."

"We are the first messengers for the rest of our *compañeras* [women] in order to encourage them."<sup>254</sup>

Cecilia and Josefina explain that in workshops women also read the passage of the Bible where a woman who had been suffering from hemorrhages touched Jesus's cloak, hoping she would be cured. Jesus turned, spoke to her, and instantly cured her.<sup>255</sup> They use this passage to point out that women in earlier times had the courage to break social norms. The laws of that time prohibited women who were bleeding from touching a man. Nevertheless, the woman in the passage had the courage to touch Jesus, who in turn cured her.<sup>256</sup>

CODIMUJ women's perception that Jesus has given them important work has impacted their own agency. Cecilia and Josefina explain that the women of CODIMUJ value their roles as wives and mothers. Nevertheless, they are demanding the renegotiation of these roles and the opportunity to participate in other roles as well. They want to bring dialogue to their families. They

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<sup>253</sup> Matthew 28, 1-8.

<sup>254</sup> Eber and Kovic, *Women of Chiapas*, 135. (Memoria from CODIMUJ Workshop, April 1997).

<sup>255</sup> Matthew 9, 20-22.

<sup>256</sup> Eber and Kovic, *Women of Chiapas*, 136.

want to make decisions together with their husbands. They want to take ownership of the values of love, equality, and freedom to liberate themselves as daughters of God.<sup>257</sup>

The very structure of CODIMUJ promotes women's agency since it is the participants themselves who take the messages to other women. The CODIMUJ's structure—divided into local, regional, zonal, and diocesan levels—facilitates the creation of networks of women from different communities, allows women to find commonalities in their experiences, and enables them to get involved in other projects. For instance, many CODIMUJ women participate in small cooperative projects such as stores, bakeries, gardens, which allow them to make some money and to improve their families' nutrition. CODIMUJ meetings also encourage women to take part in political and social life. Cecilia explains that CODIMUJ is a “sacred space” where women develop leadership, organizational, and interpersonal skills, which help them to build their self-esteem and to change their roles in their communities.<sup>258</sup>

Through the reinterpretation of the Bible and the creation of a strong network of women, the members of CODIMUJ are redefining what it means to be a woman in their homes and communities. The simple statement that men and women are equal in the eyes of God is empowering. This religious belief provides support for the idea that women should have the same rights as men. Further, it supports women's own consciousness of their dignity as human beings.<sup>259</sup>

In addition, CODIMUJ women have become social justice and environmental advocates. Cecilia and Josefina explain that members of CODIMUJ fight for the conservation of Mother Earth. In January 2017, members of the Believing Peoples of the Diocese of San Cristóbal de las Casas held a pilgrimage commemorating the 25<sup>th</sup> anniversary of CODIMUJ and the 6<sup>th</sup> anniversary

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<sup>257</sup> Interview with CODIMUJ members.

<sup>258</sup> Eber and Kovic, *Women of Chiapas*, 136; Interview with CODIMUJ members.

<sup>259</sup> Eber and Kovic, *Women of Chiapas*, 137; Interview with CODIMUJ members.

of the death of Samuel Ruíz.<sup>260</sup> They read the following public statement in the main square of San Cristóbal de las Casas:

“We denounce the projects of death: The violence, the dispossession of our lands, territories, and natural resources. Cutting down trees. Mega-projects: super highways, eco-tourism projects, mining, dams, wind turbines, gas, petroleum, destruction of the ecosystem. Privatization of natural resources. [...] In the social realm: The divisions. Machismo. Violence against and exploitation of women. The use of pharmaceutical medicines, rather than the use of traditional medicine. We denounce the government’s strategy which has used young people for drug trafficking and the consumption of drugs. Junk food. The water shortages caused by the privatization of water. The projects and reactivation of hydroelectric dams. Infiltration and creation of groups to disrupt the people’s struggle. The oil wells. [...]

As Pueblo Creyente [Believing Peoples] we intend to build autonomy in our communities, recovering our structures of governance. [...] As Pueblo Creyente we are defending Mother Earth and the territory through our way of life and pilgrimages and prayers. These are processes of becoming aware of reality. The projects in favor of life that we are building are: Unity, Conscious Raising, Dignified Lives, Autonomy, Self-Government, Fraternity, Self-Expression, Alternative Social Structures, Native Seeds, Autonomous Food Security, a Government for the Community, Freedom, Resistance, Our Ancestors’ Wisdom, True Life, People Power, Community Halls, Care for All the Plants, Animals and Other Species, and Justice.<sup>261</sup>

The work of CODIMUJ in Chiapas is illustrative to show how human rights can be appropriated by local communities when presented in familiar cultural terms. Although CODIMUJ is not necessarily teaching women their rights under CEDAW, it is certainly teaching them that violence against women is wrong and should not be tolerated. The principles and objectives are the same, it is just the language that is different.

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<sup>260</sup> Samuel Ruíz was the Bishop of the Catholic Diocese of San Cristóbal de las Casas from 1960 to 1999. He worked to construct a Catholic church that worked to defend the dignity of the poor. Indigenous communities in Chiapas referred to him as *Jtatic* (a Tzeltal word of respect which means “our father”). Samuel Ruíz is best known for his role as mediator between the Zapatistas and the Mexican government. Samuel dedicated his life to help indigenous peoples in Chiapas. He stated, “When I came to Chiapas, I really had no choice. So many people in the diocese were Indian. I came to San Cristóbal to convert the poor, but they ended up converting me.” (Eber and Kovic, *Women of Chiapas*, 133).

<sup>261</sup> “25th Anniversary of the Pueblo Creyente in Chiapas: ‘We Intend to Build Autonomy in Our Communities,’” *Dorset Chiapas Solidarity* (blog), February 6, 2017, <https://dorsetchiapassolidarity.wordpress.com/2017/02/06/25th-anniversary-of-the-pueblo-creyente-in-chiapas-we-intend-to-build-autonomy-in-our-communities/>.

According to Engle Merry, however, human rights must become part of local legal consciousness to fulfill their transformative potential.<sup>262</sup> The key question that Engle Merry raises is: “Has this movement [vernacularization of human rights] changed rights consciousness at the grass roots? Have those most vulnerable and in need of rights protection recognized their entitlements and asserted their rights?”<sup>263</sup> Do indigenous women think about their problems in human rights terms?

Engle Merry explains that a woman’s willingness to take on rights depends on her experience in trying to assert them. The more institutions respond to indigenous women’s rights claims, the more willing indigenous women will be to identify themselves as right-holders. If their rights are treated as insignificant, indigenous women may not think about their grievances in terms of rights. Engle Merry describes, for example, how women in Hawaii gradually adopted a rights consciousness. Women initially perceived themselves as wives, girlfriends, or daughters injured by those who loved them, seeing their grievances as painful wrongs in the context of marriage or family ties, and not as violations of their human rights. Nevertheless, as abused women turned to women’s centers for help, they heard that violence was a violation of their rights. Gradually women began to think of themselves as right-holders and to “stand for themselves.”<sup>264</sup> Women in Hawaii, according to Engle Merry, started to adopt a human rights consciousness because the courts, the police, and advocates supported and validated their rights claims.<sup>265</sup>

Furthermore, Engle Merry explains that as abused women call the police, walk into courtrooms, request restraining orders, and share their stories, they start to enact a different self. They start disembedding themselves from the structure of kin, neighbors, and family in favor of a

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<sup>262</sup> Merry, *Human Rights and Gender Violence*, 179.

<sup>263</sup> Merry, 179.

<sup>264</sup> Merry, 183.

<sup>265</sup> Merry, 182–83.



new relationship with the State as right-holders. Women's ability to move into a rights-based subjectivity depends on how the law and the State treats them. Engle Merry writes, "[p]oor women think of themselves as having rights only when powerful institutions treat them as if they do."<sup>266</sup>

Indigenous women's advocates—like Martha Figueroa, Josefina Martínez, and Cecilia Rovelo—can play a fundamental role as human rights translators because they conceptualize human rights issues in more than one way, and can easily move between the international, national, and local frameworks. As they move between layers, they can translate from one set of principles and terms to the other. Cecilia and Josefina, whom I spoke about CEDAW and ILO Convention 169, can translate the legal provisions in these treaties into a feminist and liberationist interpretation of the Bible to empower indigenous women. Translators and intermediaries play a key role in creating a movement where rights language and local culture come together to create social change. Through CODIMUJ's mediation, human rights have become relevant in the lives of indigenous women in Chiapas even though these women themselves may not necessarily speak in human rights terms. Through this mediation, indigenous women have joined their stories to a larger movement concerned with human rights, discrimination, and the environment.<sup>267</sup>

This section has shown that CEDAW, the UNDRIP, ILO Convention 169 and other human rights treaties can be translated and imported to local contexts to inform and transform customary laws that discriminate against indigenous women.<sup>268</sup> Indigenous women do not have to memorize human rights provisions to advance their rights, they just need to take ownership of human rights justice ideology and make it significant in the local context. CODIMUJ is an illustrative example of this process of translation and appropriation of human rights standards, which has changed the

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<sup>266</sup> Merry, 215.

<sup>267</sup> Merry, 210.

<sup>268</sup> Sieder, "Legal Pluralism and Indigenous Women's Rights in Mexico," 1138.

lives of hundreds of indigenous women in Mexico. The vernacularization of human rights is the first step to create a human rights consciousness within indigenous communities in Mexico.

Furthermore, if indigenous women become translators of human rights ideology themselves, they can begin to challenge discriminatory practices in their communities. CODIMUJ women, for instance, can start by translating their feminist and liberationist messages to a relevant language in their communities to gradually transform discriminatory practices. Dialogue at the local level has the potential of transforming gender roles and social norms from their basic structure.

Indigenous women's individual rights can be protected if self-determining indigenous communities are challenged to act in a manner that is respectful of human rights norms, including equality and non-discrimination.<sup>269</sup> CEDAW can provide a platform for information, discussion, and analysis for indigenous women to review and assess gender and power relations in their communities. For instance, indigenous law and justice systems in many communities in Chiapas are being reformed based on Zapatista laws that advance women's rights as well as national and international laws.<sup>270</sup> On March 8, 2018, in commemoration of Women's International Day, thousands of women from 27 states of Mexico and 34 countries gathered for three days at the Caracol of Morelia, a Zapatista autonomous community located in the mountains of Chiapas, to participate in the "First International Political, Artistic, Sports and Cultural Gathering of Women who Struggle." During the event, Zapatista men were left in charge of taking care of their families, cooking, and cleaning. The only men who were able to participate were the masked Zapatistas,

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<sup>269</sup> McKay, "International Human Rights Standards and Instruments Relevant to Indigenous Women," 148.

<sup>270</sup> Hernández Castillo, *Multiple Injustices*, 80–82; John Holloway and Eloína Peláez, *Zapatista! : Reinventing Revolution in Mexico* (London: Pluto Press, 1998), <http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=50801&site=ehost-live>.

who were in charge of the security of the event.<sup>271</sup>



*Figure 1. Zapatista Women's Gathering in the Caracol of Morelia, February 2018*<sup>272</sup>

By interpreting CEDAW in conformity with the UNDRIP, the ILO Convention 169, and the CEDAW Committee's General recommendations and observations, indigenous women and their advocates could build an intersectional understanding of human rights law to transform communitarian laws accordingly. This is a process that requires training and advocacy but could potentially transform communitarian laws in a way that they become more aligned with human rights international standards and respond to indigenous women's specific needs.

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<sup>271</sup> Isaín Mandujano, "The First International Gathering of Women That Struggle," *INTERNATIONALIST 360°* (blog), March 12, 2018, <https://libya360.wordpress.com/2018/03/12/the-first-international-gathering-of-women-that-struggle/>.

<sup>272</sup> "Encuentro Internacional Político, Artístico, Deportivo y Cultural de Mujeres que Luchan," *Radio Zapatista* (blog), accessed May 7, 2018, [http://radiozapatista.org/?page\\_id=26142](http://radiozapatista.org/?page_id=26142); Mandujano, "The First International Gathering of Women That Struggle."

## CHAPTER V.

### RECOMMENDATIONS

*“Human rights are difficult for individuals to adopt as a self-definition in the absence of institutions that take these rights seriously. Implementation is fundamental to establishing human rights consciousness.”*

Sally Engle Merry, 2006

This final chapter provides specific recommendations for the Mexican government, civil society, and the CEDAW Committee to effectively advance and protect indigenous women’s rights, drawing from CEDAW, ILO Convention 169, CEDAW Committee’s recommendations and observations, and the theory of intersectionality. The section is divided into three subsections. The first subsection presents recommendations for the Mexican Government. The second provides recommendations for civil society. The third provides recommendations for the CEDAW Committee. These recommendations are illustrative of the different and numerous ways in which society—as a whole—can improve indigenous women’s living conditions in Mexico. It is important to mention that some of the recommendations are overlapping. Thus, to the extent possible, the Mexican government, civil society, and the CEDAW Committee should join their efforts to advance indigenous women’s rights.

#### **A. Recommendations for the Mexican Government**

##### **1. Standardize the criteria to define and estimate the indigenous population in the country:**

- i. Clearly define who indigenous peoples in Mexico are;
- ii. Delineate where are they situated;
- iii. Understand their population dynamics;
- iv. Report disaggregated data by sex, gender, urban and rural areas, age, language, education level, ethnicity, religion, disability, and income level.

**2. Incorporate into legislation the notion of intersecting forms of discrimination against women based on race, ethnicity, religion, disability, age, class, or other factors:**

- i. Amend the constitution and all federal laws on discrimination and gender equality to incorporate the notion of intersectionality (e.g. women can be discriminated against because of factors other than their gender);
- ii. Design programs and policies with an intersectional perspective. Gender quotas may be a solution to the political exclusion of some groups of women in Mexican society, but not for others. Increasing indigenous women's political participation will require more than gender quotas;
- iii. Examine and understand the sources of discrimination against indigenous women and legislate accordingly.

**3. Adopt special measures to ensure that indigenous girls and women have access to schools, training programs, and universities:**

- i. Build schools that are accessible to indigenous women;
- ii. Establish gender quotas for school attendance in indigenous communities;
- iii. Offer vocational training programs for indigenous women tailored to their environment, social, and cultural conditions;<sup>273</sup>
- iv. Establish concrete goals to increase the literacy of indigenous girls and women in Spanish and in their indigenous languages, and adopt measures designed to meet those goals;<sup>274</sup>
- v. Adopt a program to train indigenous girls and women on technical, technological, managerial, and financial skills;
- vi. Adopt legal literacy programs;
- vii. Develop education programs along with indigenous women to address their specific needs and incorporate their stories and knowledge.<sup>275</sup>

**4. Protect indigenous women's land ownership and intellectual property:**

- i. Provide legal services to indigenous women to advise them on property rights;
- ii. Recognize *collective* intellectual property rights of indigenous peoples over their traditional handicrafts and productive methods;
- iii. Provide resources to indigenous women to work their lands including seeds, water subsidies, insecticides, etc.

**5. Consult with indigenous women when a policy or legislation that is under consideration may affect them<sup>276</sup>:**

- i. Give indigenous women a seat at the decision-making table;

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<sup>273</sup> ILO Convention 169, art. 21, 22

<sup>274</sup> UNDRIP, art. 14.

<sup>275</sup> ILO Convention 169, art. 27.

<sup>276</sup> ILO Convention 169, art 5.

- ii. Organize periodic discussion groups with indigenous women to understand their priorities for development;
- iii. Ensure the effective participation of women and indigenous peoples in all initiatives related to climate change.<sup>277</sup>

**6. Provide adequate health services in cooperation with indigenous women taking into consideration their traditional preventive care, healing practices, and medicines:**

- i. Train and employ local community health workers such as *parteras*;<sup>278</sup>
- ii. Build regional health care centers where *parteras* can aid indigenous women to give birth and where they can clean their surgical equipment;
- iii. Adopt protocols for doctors and *parteras* to work together during birth and after delivery.

**7. Adopt special measures to protect indigenous women from gender-based violence:**

- i. Conduct survey research to document the forms and the extent of violence against indigenous women;
- ii. Create shelters for survivors of gender-based violence geographically close to indigenous communities;
- iii. Provide free social services for survivors of gender-based violence in indigenous communities including psychological assistance and legal aid.

**8. Translate human rights treaties to indigenous languages and disseminate them widely, particularly ILO Convention 169, CEDAW, and CEDAW Committee's general recommendations and concluding observations:**

- i. Organize workshops on human rights treaties for indigenous peoples;
- ii. Organize, in partnership with civil society, raise-awareness campaigns on human rights treaties.

**9. Implement training programs:**

- i. Recruit and train indigenous women to provide legal aid to other women from their communities;<sup>279</sup>
- ii. Train judges and prosecutors to interpret and implement human rights treaties;
- iii. In states with large indigenous populations, train judges and prosecutors to implement CEDAW and ILO Convention 169;
- iv. Train judges how to interpret and apply the law from an intersectional standpoint;

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<sup>277</sup> CEDAW Committee, *General Recommendation 37 on gender-related dimensions of disaster risk reduction in the context of climate change*, para. 17.

<sup>278</sup> ILO Convention 169, art. 25.

<sup>279</sup> This has been implemented in Canada.

- v. Provide cultural training regarding indigenous women for judges, prosecutors, police officers, and other law enforcement officials.<sup>280</sup>

**10. Follow CEDAW Committee's General Recommendation 33 on women's access to justice to protect indigenous women against violations of their human rights by all components of the legal justice system including customary laws:**

- i. Provide language interpretation services to ensure indigenous women's access to justice;<sup>281</sup>
- ii. Enact legislation to regulate the relationships between state law and customary indigenous laws;
- iii. Enable review by State courts or administrative bodies of the activities of indigenous justice systems;
- iv. Ensure that indigenous women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard;
- v. Ensure the availability of legal aid services for women to enable them to claim their rights within the various plural justice systems.<sup>282</sup>

**B. Recommendations for Civil Society**

**1. Partner with State institutions to agree on the criteria to define and estimate the indigenous population in the country.**

**2. Publish studies and reports about the intersecting forms of discrimination that indigenous women suffer in Mexico:**

- i. Disseminate them widely with relevant governmental agencies, other non-governmental organizations, and international bodies including the CEDAW Committee;
- ii. Lobby or campaign for more inclusive and intersectionality-based policies and legislation;
- iii. Turn this thesis into a report, publish it, and get other organizations to adopt it.

**3. Build partnerships with other non-governmental and governmental organizations to ensure indigenous women's access to education and training:**

- i. Design education programs to address indigenous women's specific needs;
- ii. Create legal and financial literacy programs for indigenous women;
- iii. Provide sexual health education to indigenous girls and women, analyzing the consequences of child and forced marriage.

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<sup>280</sup> This has been implemented in Canada.

<sup>281</sup> ILO Convention 169, art. 12.

<sup>282</sup> CEDAW Committee, *General recommendation 33 on women's access to justice*, para. 61-64

**4. Provide legal services to indigenous women:**

- i. Advise them on property rights;
- ii. Advise them on cases involving gender-based violence;
- iii. Litigate their cases in court;
- iv. Engage in strategic litigation of indigenous women's rights.

**5. Use human rights treaties in litigation and legal proceedings:**

- i. Cite human rights provisions enshrined in international treaties ratified by Mexico, particularly those in CEDAW, ILO Convention 169, and Convention of Belém do Pará;
- ii. Cite international case law and jurisprudence;
- iii. Adopt an intersectional perspective to human rights law and draft legal briefs accordingly.

**6. Engage with the CEDAW Committee's monitoring mechanisms:**

- i. Submit individual communications denouncing violations of indigenous women's rights under CEDAW;
- ii. Submit inquiry petitions denouncing grave and systematic violations of indigenous women's rights under CEDAW;
- iii. Work together with the government on its periodical reports to the CEDAW Committee;
- iv. Submit shadow reports to the CEDAW Committee describing Mexico's implementation of CEDAW in relation to indigenous women;
- v. Participate in the CEDAW Committee's pre-sessional working group meetings and sessions;
- vi. Train indigenous women and other non-governmental organizations on how to draft and submit individual communications, inquiry petitions, and shadow reports;
- vii. Share with other organizations the achievements, challenges, and lessons learned of engaging with the CEDAW Committee's monitoring mechanisms.

**7. Translate international human rights standards and principles into familiar cultural terms for indigenous communities:**

- i. Engage in community education and training including public awareness campaigns, human rights training, and public events;
- ii. Build an intersectional understanding of human rights law to transform communitarian laws accordingly;
- iii. Include traditional and religious authorities in the translation and appropriation process.



**8. Establish a human rights consciousness among indigenous women:**

- i. Provide services *framed in rights terms* at the grassroots;
- ii. Speak in rights language;
- iii. Show indigenous women that they are right-holders by effectively responding to their needs.

**9. Promote community dialogue:**

- i. Organize meetings with indigenous women and men to discuss issues important to women such as education, health, political participation, family relations, and gender-based violence;
- ii. Listen to indigenous women's needs and wants.

**10. Build strong local, national, international, and transnational networks:**

- i. Organize awareness-raising campaigns;
- ii. Bring indigenous women's concerns to the national and international agenda;
- iii. Pressure the CEDAW Committee to adopt a general recommendation on indigenous women.

**C. Recommendations for the CEDAW Committee**

**1. Request Mexico to provide specific information regarding indigenous women's rights**

- i. Include indigenous women's concerns on the list of issues for Mexico.
- ii. Meet with indigenous women's organizations to understand their concerns.

**2. Publicize and promote the monitoring mechanisms under CEDAW among civil society in Mexico**

- i. Encourage civil society, through UN agencies and other partners, to engage with the CEDAW Committee's monitoring mechanisms to denounce human rights violations under CEDAW against indigenous women;
- ii. Compile and publicize guidelines in Spanish on how to submit a shadow report, an inquiry petition, and an individual communication;
- iii. Partner with the Mexican government and civil society to translate the above-mentioned guidelines to indigenous languages.

**3. Publish a general recommendation on indigenous women**

- i. Raise global awareness on indigenous women's rights and issues;
- ii. Advise countries on how to implement CEDAW in relation to indigenous women;
- iii. Acknowledge and explain the unique forms of discrimination that indigenous women suffer;
- iv. Recommend specific strategies to address human rights violations against indigenous women.

## CONCLUSIONS

This thesis provides guidelines and recommendations to interpret and apply CEDAW from an intersectional standpoint to advance indigenous women's human rights at the national, international, and local levels. The UNDRIP, ILO Convention 169, and the CEDAW Committee's recommendations and observations should always inform the interpretation and application of CEDAW in relation to indigenous women. Indigenous women's right to health cannot be realized if their traditional healing practices and medicines are not respected. Indigenous women's rights to political participation cannot be realized if their communities are prevented from exercising their rights to self-determination and autonomy. Indigenous women's right to property cannot be realized if they are displaced from their ancestral lands. Indigenous women's right to education cannot be realized if their indigenous languages and stories are absent from the academic curriculum. If CEDAW is interpreted and applied with an intersectional perspective, in light of CEDAW Committee's recommendations and observations, ILO Convention 169, and the UNDRIP, it will become an effective framework to protect indigenous women both as members of indigenous communities and as individuals.

At the national level, lawyers and advocates must learn how to use CEDAW and other human rights treaties to make Mexico accountable for human rights violations in domestic courts. Since the Human Rights Reform of 2011, judges in Mexico are obligated to consider human rights norms contained in the Mexican Constitution and international treaties ratified by Mexico when issuing a judgement. It is imperative, therefore, that lawyers in Mexico cite in their briefs international human rights provisions and jurisprudence to assert indigenous women's rights. If lawyers and advocates in Mexico advance the Human Rights Reform of 2011, by bringing

international human rights provisions into their legal strategies, judges will have to familiarize themselves with this legal system and learn how to apply it.

At the international level, civil society must pressure Mexico to conform to its international obligations by informing the Committee's assessment of Mexico's implementation of CEDAW. Non-governmental organizations must learn, and teach other organizations, how to submit individual communications, inquiry petitions, and shadow reports to the CEDAW Committee. Moreover, when possible, non-governmental organizations should attend the CEDAW Committee's sessions and lobby for the inclusion of indigenous women's concerns on the list of issues for Mexico. Through lobbying and advocacy, civil society must ensure that indigenous women's rights are part of the CEDAW Committee's agenda for Mexico. In addition, NGOs must urge the CEDAW Committee to publish a general recommendation on indigenous women that provides concrete guidelines on how to interpret and implement CEDAW in a relevant manner to indigenous women.

At the local level, indigenous women and their advocates must create strategies to challenge and change discriminatory laws and traditions in indigenous communities. Indigenous women can and should become human rights vernacularizers to redefine their roles as women in their communities. Indigenous women like Norma Don Juan, Laura Hernández, and Isabel Gómez have not only adopted a human rights consciousness, but have also become strong promoters of their rights. Today, they are challenging their communities and families to act in a manner that is respectful of indigenous women's human rights. At the same time, they are educating their children and other indigenous women to adopt a human rights ideology; one in which indigenous women are seen as right-holders and duty-bearers, not as victims.

Norma, Laura, and Isabel, however, are not representative of indigenous women in Mexico. Only a few of them have been able to empower themselves and fight for their rights and equal status in society. The majority still live in poverty at the margins of society. Indigenous women's human rights will become a reality only if and when Mexican society recognizes them as right-holders, responds to their claims, and asserts their rights. As Engle Merry states, women will think of themselves as having rights only when society and its institutions treat them as if they do.<sup>283</sup>

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<sup>283</sup> Merry, 215.

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